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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1400)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): I call the meeting to order.

Welcome, everybody, to meeting number 112 of the Standing Committee on Industry, Science and Technology as we continue our study on the legislative review of the Copyright Act.

If you've been following along, you've probably seen that we've already had quite a few witnesses. This is day four of our road trip, and it's been very successful. The questions that we're asking can be pretty tough sometimes, but we need to be able to get good answers so our wonderful analysts on this side here can make a fantastic report.

We are going to get started.

Today we have with us, as an individual, an author, Patricia Robertson.

From the Association of Manitoba Book Publishers, we have Annalee Greenberg, Editorial Director, Portage and Main Press.

We have, from the University of Manitoba, Naomi Andrew, Director and General Counsel.

Finally, from the Winnipeg School Division No. 1, we have Sherri Rollins, Chair of the Board of Trustees.

I will say that if you are not using your headpiece, keep it away from the microphone because it can go "pop" pretty loudly.

We have translators in the booth over there, some good supporters. It's not Quebec, so I can say "translators." Everything that we're doing is being recorded and translated. It's all for the record, so take your time. Don't rush through your testimonies. You will each have up to seven minutes because we managed to add an extra couple of minutes. After all the presentations are done, we will go to our questions.

We're going to start with Patricia Robertson. You have up to seven minutes.

Ms. Patricia Robertson (Author, As an Individual): Thank you very much, Mr. Chair. Thank you for this opportunity to present in front of the committee.

My name is Patricia Robertson. I'm a writer of short fiction, novels, poetry, essays, and literary journalism. I've published two books and co-edited *Writing North: An Anthology of Contemporary Yukon Writers*. I hold an M.A. in creative writing and I've taught creative writing at the university level for over 30 years in Vancouver, B.C.; Whitehorse, Yukon; and now in Winnipeg. I've held writer-in-residence positions across the country in libraries and universities in B.C., Ontario, and Manitoba.

I'm also a professional editor, primarily in non-fiction and educational materials, and I've worked with a number of Canadian publishers and organizations. I've been a member of the Writers' Union of Canada, and I served two years on its governing council.

I'd like to sketch a brief portrait of my income as a writer—that is, writing-related income, excluding teaching and freelance editing.

Last year my writing-related income totalled $10,353. I was fortunate to receive $10,000 of that total from a Manitoba arts grant. I also received a grand total of $40 in book royalties and approximately $250 from the public lending right fund, administered by the Canada Council. Finally, I received $63 from Access Copyright, the agency that disburses funds received under the copyright tariffs.

A few years ago, before the educational sector decided on their own interpretation of "fair dealing" under the Copyright Act, I received about $500 a year, so you can see there's been a huge drop. I'm now receiving about 13% of what I used to receive per year.

My husband is also a writer. He is a poet with four published books. Together, we used to receive about $1,100 per year from Access Copyright. We now, together, receive about $100 per year as payment for the reproduction of our work. That's a drop of about 90%.

These amounts may sound very small to the committee. I can assure you that as two independent self-employed writers, my husband and I, for us $1,100 per year is a significant amount. The loss of that income is painful, and it's particularly painful to be exploited by a sector that ought to understand the need to fairly compensate Canadian writers who, after all, provide the content that the educational sector uses.

I work in the educational sector as a university instructor, and I want to be able to use a wide variety of materials in the courses I teach. I also want to be sure that the creators of those works are compensated for the use of their work in a course pack. Like many instructors, I rely on a company called Canadian Scholars to assemble the materials I select, verify their copyright status, and arrange for payment to the authors. I'm now told that Canadian Scholars is also more and more relying on the educational sector's interpretation of the Copyright Act and is therefore not compensating authors.

To be absolutely clear about what writers earn from their publishers and to clear up any misconceptions, most of us are not J.K. Rowling, or even Margaret Atwood, for that matter. A bestseller in Canada is about 2,000 copies. I'm talking about fiction now. The author's portion of that, assuming that the book is priced at $30, is 10% of net, or $1.80. That's a total of $3,600 for what may have been three or four years of work.

That's a best-case scenario. Most books are not bestsellers, and some of those 2,000 copies are promotional and author copies or damaged. Those 2,000 copies may take years to sell. Meanwhile, the author is working on the next book, subsidizing it through whatever freelance work or day job they can.

I'd like to finish by pointing out that large corporations, including universities, take all possible steps to protect their own intellectual property, yet apparently Canadian writers, who provide the imaginative and creative work that Canadian students read, are expected to essentially underwrite the educational sector for free.

● (1405)

When school boards are buying one copy of a book and photocopying a classroom set with no compensation to the writer whatsoever, there is something deeply wrong with the support of the cultural sector in this country.

Thank you.

● (1410)

The Chair: Thank you very much.

We're going to move to the Association of Manitoba Book Publishers.

Annalee Greenberg, you have up to seven minutes, please.

Ms. Annalee Greenberg (Editorial Director, Portage and Main Press, Association of Manitoba Book Publishers): You gave me two extra minutes that I don't have—

The Chair: You don't have to use them.

Ms. Annalee Greenberg: Okay.

I'm Annalee Greenberg. I am co-owner and Editorial Director of Portage and Main Press, and I am here today on behalf of the Association of Manitoba Book Publishers, or the AMBP. That is an organization that represents 14 publishers, producing a wide variety of books in English, French, and several indigenous languages. We want to acknowledge today that we are on Treaty No. 1 territory, home of the Métis nation.

Our primary concern is that the fair dealing section of the Copyright Act needs to be clarified. Adding education as a purpose for fair dealing has caused immense harm to Canadian and Manitoba publishers and has decimated the educational book sector. The changes affect both copyright royalties and book sales.

I know that you've heard from others in the publishing community, including the Association of Canadian Publishers, so I'll not repeat what you may have already heard, but I will provide some examples of how the changes have affected publishers here in Manitoba.

For instance, before 2012, Access Copyright royalty payments to Fernwood Publishing were enough to support a full-time employee. Now the payments might support a one-third-time worker. Several Manitoba publishers have reported drops in copyright revenues of between 75% and 90%. Creative sector jobs and Canadian content are both at risk of being lost.

When the education sector devised its own guidelines without consulting publishers, it ultimately led to litigation. The case of Access Copyright versus York University in the Federal Court in July 2017 illuminated the shortcomings of the education sector's interpretation of fair dealing.

In addition to the loss of copyright revenues, publishers are also seeing decreases in sales of books, as educators copy instead of purchase.

Within a year of the changes to the copyright law, Les Éditions du Blé experienced a 35% decrease in overall sales because of copying, and sales of its educational material continued to decrease year after year. In 2016 it completely ceased publishing on the education side because it was unsustainable. This was a move that disappointed many educators, as Les Éditions du Blé was one of the few publishers of French material outside Quebec. Translators, scholars, and K-to-12 educators who had been employed on the educational side were casualties of this decision.

Portage and Main Press, the company I am affiliated with, was also affected. With educators buying fewer books because of copying, author royalties have diminished. These diminished sales are not being balanced with K-to-12 copying tariffs, however, which at Portage and Main are down 88% from what they were in 2013. Our authors are facing a substantial drop in income as a result of those lost royalties, the means by which they are paid for their work. In some cases, they've taken other jobs, as writing no longer supports them.

We have reconsidered publishing textbooks and other curriculum materials, as revenues no longer cover the costs necessary to attain the quality standards expected by Canadian educators and that our company has become known for. I brought a few samples of textbooks that we and du Blé have published.

The educational component of Fernwood's publishing program has decreased from over 70% of its sales to about half. In time, there will be little or nothing produced by local writers and publishers that reflects regional and national narratives for schools and teachers to copy.

One publisher reported that it may now receive orders for a single copy of a textbook for an entire school or school division, which is clearly an unsustainable business model.

We do have some recommendations.

We recommend an immediate end to unfair copying, which in itself helps to clarify fair dealing. We'd also like to see clarity around fair dealing provisions that take into account purpose, character, amount of copying, alternatives, effect of the dealing, and nature of the work, as emphasized in the ruling on the Access Copyright versus York case.

We'd like to see educators and independent Canadian publishers work together to develop fair dealing regulations that are mutually beneficial. Manitoba publishers are ready to come to the table. We'd also like to see collective licensing reinstated in the education sector, as it is proven and affordable.

● (1415)

With publishers no longer developing high-quality, uniquely Canadian materials, teachers will have to find other resources for their classrooms. It may be a challenge to find such materials, because quality costs and expertise must be compensated. Ultimately, Canadian students are the losers.

Thank you.

The Chair: Thank you very much.

Now, from the University of Manitoba, we have Naomi Andrew.

Ms. Naomi Andrew (Director and General Counsel, Office of Fair Practices and Legal Affairs, University of Manitoba): I'd like to thank the chair and committee members for inviting me and my colleagues to appear today on behalf of the University of Manitoba and for granting us this opportunity to take part in this first Copyright Act review process.

We acknowledge that we are on the lands of Anishnaabe, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis nation. We respect the treaties that were made on these territories. We acknowledge the harms and mistakes of the past, and we dedicate ourselves to moving forward in partnership with indigenous communities and in a spirit of reconciliation and collaboration.

The University of Manitoba will be submitting a written brief. However, we would like to highlight a few areas in our submission today. These are that the university is a content creator; it also supports the Canadian creative economy by being a content user, and it supports maintaining the fair dealing exemption. The university's library acquisitions have increased; however, there has been a corresponding shift toward acquiring more digital content.

As well, the copyright revisions need to support reconciliation and the mandate of the National Centre for Truth and Reconciliation.

The University of Manitoba is the largest university in the province, with a community of over 30,000 students and 9,000 faculty and staff. Our community members are both content creators and content users. As content creators we contribute significantly to the Manitoba creative economy through cultural productions, academic publications, and research projects. In 2017 over 3,000 publications included University of Manitoba affiliation.

In particular I'd like to point out that the University of Manitoba supports Canadian content, authors, and publishers through various initiatives, although sometimes through new acquisition models involving intermediaries. Also, our libraries have two long-standing programs for monograph acquisitions, focusing on Canadian literature and Canadian studies.

The University of Manitoba strongly supports maintaining education as a fair dealing purpose and stresses that this exemption is providing measured access to content for students and academics just as intended, as a reasonable complement to, not replacement for, purchased content. The perceived decline in profits attributed to the educational exemption may be more related to a change in our preference for licences and e-formats. Therefore, creators may see new revenue streams from these licences that reflect the dominant way in which we now acquire and make available scholarly content. Correlation does not necessarily equal causation.

Over the past decade, university members have increasingly expected digital access to materials, and our acquisition trends reflect this. In speaking with my colleagues prior to this presentation, I noted that all my 11-year-old son's textbooks are online. That's the expectation as students move through the system.

The majority of our library acquisition expenditures now go toward subscriptions to license electronic academic journals, but I should also point out we continue to purchase and license scholarly monographs, both in electronic and in print formats. For example, from 2012 to 2018, our overall acquisitions expenditures that went toward e-subscriptions increased from 49% to 73%. During the same time period, e-books increased from 14% of annual monograph purchases to 77%. Thus, we are paying less in transactional fees and individual print copy purchases but significantly more to publishers for licences.

Universities are not in a position to acknowledge how publishers are compensating creators under the digital licences we are increasingly purchasing, but we urge caution that the Copyright Act should not be revised in a way that may inequitably shift the impact of the digital disruption from the publishing industry to the education sector.

● (1420)

I would like to end by speaking about copyright as it relates to the National Centre for Truth and Reconciliation. The NCTR is hosted at the University of Manitoba and is home to approximately five million documents relating to the history of Indian residential schools. As with most archives, we do not own the copyright or the majority of archival documents and images.

The Copyright Act serves as a barrier when NCTR is contacted for permission to use archival images for purposes that clearly support reconciliation. Only the original creator of the photograph can permit its reuse if a copyright exemption does not apply. Because of the history of Indian residential schools, the requirement for an individual, such as a survivor, to have to contact a creator for permission is a very real barrier to youth and reconciliation. We propose that fair dealing be expanded to include an exemption permitting the use of full historical, archival, and museum content for reconciliation purposes.

While the University of Manitoba believes that the Canadian Copyright Act has strong provisions that benefit both creators and content users, we urge growth in terms of how reconciliation is treated under the Copyright Act. We will be elaborating on these issues further in our forthcoming brief.

Thank you.

The Chair: Thank you very much.

Finally, from the Winnipeg School Division, we have Sherri Rollins.

Ms. Sherri Rollins (Chair of the Board of Trustees, Winnipeg School Division): Thank you, Chair.

On behalf of the Winnipeg School Division, I would like to thank the members of the Standing Committee on Industry, Science and Technology for the opportunity to provide feedback on the potential impact to student learning as a result of any revisions to the Copyright Act, specifically the requirements of section 29 on fair dealing.

It is my understanding that the framework for the review should include the educational needs and interests of indigenous peoples as part of reconciliation, as well as supporting Canada's two official languages, French and English, in terms of access to materials in all forms, as identified in the Copyright Act. The Winnipeg School Division has some very key information to share to that end.

The members of the board of trustees are concerned that revisions to eliminate the fair dealing provisions would have a severe and negative impact on the ability of our teachers to provide our students with extensive and complete classroom resources, both digitally and in print, due to the inability to incur additional costs to access materials for—similar to the University of Manitoba—our 33,000 students throughout 78 schools.

Winnipeg School Division is one of the largest employers in the province, and the largest and oldest school division in Manitoba. The division provides educational programs and supports for more than 33,000 students, from nursery school to grade 12, including adult programming.

The demographics of the Winnipeg School Division are in exhibit A as provided. The division serves a significant number of families who live in poverty: over 50% of the families have incomes below the low-income cut-off. Indigenous families, such as my own, represent approximately 27% of all families with children in the division. Almost 50% of all immigrants who arrived in Winnipeg in the past five years live in the division's footprint, and 42% of elementary and 44% of secondary enrolment in the division experience high student migrancy levels.

We're proud to offer educational programs and related services to students from nursery to grade 12 in regular elementary and secondary classes as well as alternative, advanced, and language programs. We have a wide variety of programming in place for students with special education and behavioural needs. We're committed to lifelong learning and offer programs that allow adults to continue to learn and enrich their lives and adolescent parents to succeed as parents and as learners. New Canadians and students and families from a variety of diverse cultures are also supported with programs in the Winnipeg School Division to help ensure success in our schools and our communities.

Student wellness and development is another priority that is evident in programming, such as school therapy and counselling services.

We've implemented a wide variety of initiatives to support indigenous education for both students and our staff. Indigenous programming and curriculum education initiatives are woven throughout nursery to grade 12, across curricula, across the Winnipeg School Division. Some examples include elders in schools, including our traditional knowledge-keeper and divisional elder; programs that include indigenous music, visual arts, dance; indigenous games, athletes, and role-model studies; star blanket math, and I could go on.

We also offer a number of language programs such as French immersion, but also bilingual Cree and Ojibwe programming, and bilingual Hebrew, Ukrainian, and Spanish. We also, of course, have English as an additional language to over 7,113 students.

The primary responsibility of our board of trustees is to ensure that all students receive the highest-quality education possible in our schools. As you can appreciate, in order to achieve these goals and foster academic, physical, social, and personal growth, teachers require access to a variety of educational materials to create engaged learners. For example, teachers need to incorporate current resources on human rights, poverty, equity, and sustainable development, including reconciliatory actions, and these resources might only be available online, in news media, or in digital formats.

Students need to be able to synthesize and present their discoveries using digital and video technologies and to express their viewpoints through creative arts and performances.

Students also need to be able to manipulate and reformat resources, as allowed within the Copyright Act, for educational purposes.

● (1425)

Along with this overarching responsibility, our board of trustees must provide responsible stewardship of the financial resources entrusted to it and must work in partnership with families, communities, and other organizations in ways that impact positively the overall well-being of children and youth. The federal government must be a partner, not a barrier, to this work.

As the division serves a very diverse and unique community in which education is critical for the success of youth, many programs and services are provided that are not currently funded by the Province of Manitoba. The costs for the various programs and services that our division is not required to provide within the Public Schools Act total over $14 million, and that is provided to you in exhibit C.

The division relies on the revenues raised from property taxation to offer unique programs and services for students. Of our funding, 60% is provincial government; the other 40% is raised through property taxation in Manitoba. In an urban indigenous city like Winnipeg, the Winnipeg School Division also has a story to tell this committee on the impact of the federal government's chronic underfunding on reserve, the pressures that this segregated system has had on our school, and the history of colonialism. Thanks to Murray Sinclair, our proud independent senator, there is an increasing public awareness of the deplorable living situations on reserve and a growing awareness of the impacts of poverty, poor housing, sanitation, and five generations of the Indian residential school, and we're only beginning to realize the costs on school systems, such as the one I represent in the Winnipeg School Division.

Many increased costs in school divisions' operations are beyond the control of school boards. Changes in student populations and enrolment due to immigration or refugee crises, for instance, changes in needs and expectations, as well as new provincial policy directions and legislation, arbitrated salary awards, and inflationary increases for services and commodities have significant financial impacts for school board budgets and implications for property tax levels.

The Winnipeg School Division recognizes and values the provisions of the Copyright Act, as expressed in federal law. Our commitment to honouring the rights of copyright holders is a priority for educators. We have done our part. We promote copyright provisions and invest funds annually through licences, ensuring copyright holders are compensated for use of work for SOCAN, the National Film Board of Canada, and Re:Sound, etc.

I am hopeful today that the information shared will demonstrate that substantial revisions to the Copyright Act and the principle of fair dealing would have a devastating impact on a school division like ours and the ability of our teachers to provide students with current extensive teaching resources, especially in digital and non-traditional formats.

● (1430)

The Chair: I'm going to have to cut you off there.

We're going to move on with questioning.

Mr. Jowhari, you have seven minutes, please.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

I welcome all the witnesses. Thank you for taking the time and sharing your insights and your positions and for making recommendations.

Ms. Robertson, you indicated that the revenue you've had from publishing and Access Copyright has drastically been reduced. You mentioned $63, but can you give me a comparison between 2012 and 2018?

Ms. Patricia Robertson: Yes. I believe I mentioned that I was getting about $550 before 2012, when the educational sector, as I said, unilaterally decided to reinterpret fair dealing. That's the base amount. With Access Copyright—and again I'm speaking for writers—all the monies are pooled, so all tariffs they receive from the educational sector will come into this pocket of money, which is then distributed to all writers across the country. As a result, even writers like me who are not writing directly for the educational sector will still receive that base payment. There will be top-ups if your particular work has been adopted for a classroom or—

Mr. Majid Jowhari: How much of that $550 was the top-up? How much of it was—

Ms. Patricia Robertson: The top-up would be above that $550, and really, it would vary for each writer. I have never received a top-up, so I'm speaking about the base amount that every writer registered with Access Copyright would have received.

Mr. Majid Jowhari: You indicated that your income, as it relates to publishing, has now gone down about 90%.

Ms. Patricia Robertson: Yes.

Mr. Majid Jowhari: Ms. Greenberg, you touched on digital, but I want to go back and ask a question around it. How much money are you spending on digital or earning on digital, as opposed to print?

Ms. Annalee Greenberg: I'm afraid I don't know how much we're spending on it, but virtually for every book that we publish, we publish an e-book. A book like this has added features, such as live links to archeological sites.

I'm not sure. I can find out for you. Let's just say that the expected sales for e-books are minimal.

Mr. Majid Jowhari: Let me try to approach it in a different way. What impacts has the digitalization of publishing had on you, on your members?

Ms. Annalee Greenberg: Frankly, not a lot. We have produced e-books.

Do you guys have any numbers on how many e-books you sell? There are some other publishers here. I'm just wondering.

We create them, but very, very few people indeed buy them. I can find actual numbers.

Mr. Majid Jowhari: Yes, could you find that and submit it?

This question is also to you, Ms. Greenberg. You made four recommendations. One of them was around clarity. You recommended that the purpose, the character, and other elements need to be further identified. Can you expand on that one quickly?

● (1435)

Ms. Annalee Greenberg: I took that directly from Judge Phelan's judgment on Access Copyright.

Mr. Majid Jowhari: How is that going to help the creative economy?

Ms. Annalee Greenberg: It's because right now they are strictly looking at the amount,10% per book.

I have another statement here from someone who has had course packs developed. To me, a course pack is basically republishing. For example, another publisher contacted me about publishing an essay from this book. We found out where they were going to publish, the rights that they wanted, the geographic location, and the duration, and we came up with an amount for that permission.

What's happening at the university level is that universities are essentially creating their own publications, and I consider "publish" to mean "to make public for a number of people". I don't know if I'm answering your question, but if indeed a student is doing an essay on the Delgamuukw case and wants to use that chapter in their private study in order to work on their paper or something like that, to me that is fair use, but republishing is not.

When I say the purpose, if it's not private study and it's not someone's own educational research, that's taking it into a different realm. I hope that answers it.

Mr. Majid Jowhari: You talked about course packs. We've been talking to a lot of universities. Ms. Andrew, can you give me an idea of how much you're spending on purchasing content?

Ms. Naomi Andrew: Do you mean purchasing content in general, or acquisitions?

Mr. Majid Jowhari: It's acquisitions, yes.

Ms. Naomi Andrew: Yes, we have quite a bit of data on our acquisitions.

Mr. Majid Jowhari: Could you break it down into how much it is for digital and non-digital? That would be greatly appreciated.

Ms. Naomi Andrew: I'll let the library answer on our acquisitions broken down into digital and electronic.

Mr. Majid Jowhari: Could you tell me how much you're spending overall first?

Ms. Mary-Jo Romaniuk (University Librarian, University of Manitoba): I can answer on behalf of what the library spent on purchasing, both electronic and print, in total, and I can give you the different amounts that we have spent in total over the years.

In 2012-13, we spent $9.485 million on acquisitions. That would include all acquisitions, including literary works in both e-format and print format. It would include the electronic subscriptions to journals and print journals.

In 2017-18, we spent $10.8 million on the same packages of things.

Mr. Majid Jowhari: So over four years you've gone over about a million—

Ms. Mary-Jo Romaniuk: We have. Some of that is because of inflationary pressures.

Mr. Majid Jowhari: Can you give me the breakdown of how much of it is digital?

Ms. Mary-Jo Romaniuk: Sure. In terms of electronic subscriptions, approximately half of it is electronic subscriptions, and that would be mostly for journals. Roughly 25% is for print subscriptions, those again likely being journals and book purchases, monograph purchases, which for us are literary works and scholarly works, as we tend not to purchase textbooks. This is $1.8 million. That would be combined between print and e-book. I could break that down further for you, because we have it in our submission. You can see there are a lot of numbers there.

Mr. Majid Jowhari: That's fine. Perfect. Thank you.

The Chair: Everybody is taking advantage of my time right now. Thank you very much.

Before I move on, Ms. Greenberg, you had listed a book. Can you just tell us the name of the book and the author, please?

Ms. Annalee Greenberg: There are a couple.

The Chair: It's the one you were referring to. Yes, that's the one.

● (1440)

Ms. Annalee Greenberg: It's *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada*. It's written by Chelsea Vowel, who is, I guess, a lawyer and scholar. It's an interesting one because, both at the secondary and university level—

The Chair: That's fine. I just needed to know the name and the author. Thank you very much.

We're going to move to Mr. Lloyd. You have seven minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Thank you to you all for coming out today, and for your presentations.

My first question is going to be for Ms. Greenberg. You seem to be on the hot seat quite a bit today.

In our previous committee sessions, it's been noted by a lot of universities and schools that they have been shifting to digital, and this has been put forth as a reason that they're not going with traditional Access Copyright or other measures. You said earlier today that you publish e-books, so in your opinion, has the e-book market been drastically undercut by the current fair use provisions?

Ms. Annalee Greenberg: I don't know. We sell e-books. We have not seen sales to universities. We haven't seen a lot of sales altogether.

Mr. Dane Lloyd: So you've seen a drop in print sales, but you haven't seen a corresponding rise in digital sales.

Ms. Annalee Greenberg: Not at all, no.

Mr. Dane Lloyd: Do you think, in your opinion, that you can infringe the copyright of an e-book?

Ms. Annalee Greenberg: Absolutely.

Mr. Dane Lloyd: Then it's plausible that this is happening.

Ms. Annalee Greenberg: Yes. Absolutely.

Mr. Dane Lloyd: In your opinion, when a school or a university says, "We're spending more on digital, and that's why the authors and the publishers aren't enjoying as much revenue", does that make any sense to you?

Ms. Annalee Greenberg: No. Again, with this book, we just had a request from a university library for the e-book, not to buy it but to have it forever for lending rights. They wouldn't give us a term on it, instead of going through the usual process for lending rights. They would not give us a limit; they wanted it in perpetuity, and we basically said no.

Mr. Dane Lloyd: Thank you.

My next question is for Ms. Andrew and your colleague.

Can you give us a breakdown of the source of the content? If not immediately, please pass it on to our committee. I know my colleague has asked whether it is digital, whether it is print, but I would like to know which countries' authors you are paying. Are you paying Germany's authors? Are you paying America's authors? How much are you paying Canadian content authors? Do you have those numbers?

Ms. Naomi Andrew: Yes, do we have—

Ms. Mary-Jo Romaniuk: I can give you some numbers. We've also put them in the submission.

I just want to put a point of clarification, and I will give you an example that helps answer that question. When you're talking about paying authors, we have what we purchased from Canadian publishers and Canadian authors. There are many Canadian authors who are publishing in American journals, of course, with American publishers, so when you ask the question about paying Canadian authors, I can say we know how much Canadian content we're buying—in other words, published Canadian content. We don't know it totally, but we've been able to pull some of that out for you.

Mr. Dane Lloyd: When you pull content from another country, whether or not it's from a Canadian author, do you pay those publishers copyright fees that you would not pay to a Canadian publisher?

Ms. Mary-Jo Romaniuk: We pay the same.

We acquire materials in two ways. We acquire print materials by buying the print copy. When we buy electronic materials, we pay a licence to the publisher. If it is an American publisher, it would be under that licence; that's how we acquire it. If it's a Canadian publisher, it's likewise.

Mr. Dane Lloyd: But you aren't paying Access Copyright.

Ms. Mary-Jo Romaniuk: You would not, because the licence supersedes that and gives us the terms and conditions of use.

Mr. Dane Lloyd: Access Copyright represents Canadian authors and publishers, but they have said they're not being paid.

Ms. Mary-Jo Romaniuk: Well, it is the responsibility of the publisher we acquire from, whoever it is—it could be an aggregator of some sort, or a publisher—to pay the authors when they give us the licence.

Mr. Dane Lloyd: Okay. I'll move to another person, but I want to keep that in mind.

Ms. Rollins, on the very detailed explanation of the various cost breakdowns within the Winnipeg school district, I just want to know if you have a number for how much out of your $396 million operating budget currently is spent on copyright licensing.

● (1445)

Ms. Sherri Rollins: It is approximately $34,000.

Mr. Dane Lloyd: That would represent basically—

Ms. Sherri Rollins: —a dollar per student.

Mr. Dane Lloyd: So Access Copyright...and numerous publishers have listed that. It's about $26. That's what the cost would be to return to a collective licensing regime. With a $396 million budget, and with 33,000 students, paying $26 each adds up to about 0.002% of your total budget. How do you square that with your statement that this has a devastating, severe, negative impact when it is 0.002% of your total budget?

Ms. Sherri Rollins: Well, in part I did review how I've squared that. There is a downloading of federal government costs, and the copyright would just be on the list of how we're getting squeezed from a provincial government that didn't give us an increase despite the fact that hydro rates are going up, and a federal government that has long not paid for the effects of colonialism and funding on-reserve.

I'd also say that years ago, when we were paying approximately $2 a student, there were provisions in the Copyright Act for that.

This isn't what I understand the committee is coming forward on for a new formula. We're here to talk about fair dealing provisions and our desire to see them maintained.

Mr. Dane Lloyd: Yes, but if we did take education out of fair dealing, we would probably have to return to a collective licensing regime in order to fulfill the law.

I'm going to move to the reconciliation, which you did bring up. We heard testimony from a professor emeritus, Dr. Andrea Bear Nicholas in which she stated quite clearly, to paraphrase, that the act of taking something from an indigenous creator—and we have been talking a lot about indigenous users—and not compensating them for it is an act of colonialism.

How would your school compensate indigenous authors fairly under the truth and reconciliation principles?

Ms. Sherri Rollins: First of all, we do have indigenous authors on staff in our division—and it's not a school, but a school division, and we have indigenous authors as part of our faculty.

I did go over some of the copyright provisions that we promote, such as that we invest funds through licences to ensure copyright holders are compensated. An example is SOCAN, or the National Film Board of Canada. Some of our faculty participate in the National Film Board and Re:Sound—

Mr. Dane Lloyd: Is that all included in the $34,000 number, or is that in addition to $34,000?

Ms. Sherri Rollins: There's more, such as Criterion-on-Demand film performance licences, and performance fees to music companies, so we do our part.

Mr. Dane Lloyd: Is that included in the $34,000 number, or is that on top of it?

Ms. Sherri Rollins: That can be over and above. I just gave you an estimate on any given year.

Mr. Dane Lloyd: If it's $34,000, what would be the total number that is spent on licensing and SOCAN and those things, including these additional things you've said?

Ms. Sherri Rollins: It depends on the year. Are we doing the *The Lion King* musical as a division, as we did last year? Is there a particular human rights inquiry that we're doing as a division? Is a particular high school with 1,500 students doing something in particular? It really does depend. On average, we hit around the $30,000 or more ballpark.

Mr. Dane Lloyd: I think that's it for my time.

● (1450)

The Chair: Mr. Masse, you have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you everyone for being here today.

Ms. Robertson, could you remind us again how much your income as an author has dropped or changed in the last few years?

Ms. Patricia Robertson: My reimbursement from Access Copyright has dropped from $550 per year to $63.

I should clarify. It's been dropping year by year, and this year it was $63.

Mr. Brian Masse: Have other opportunities emerged to increase your revenue capabilities?

Ms. Patricia Robertson: I wish I could answer yes, but no. I think it's important also to keep in mind that the entire cultural sector is under assault by companies like Amazon, and by Google, which is, as we speak, illegally reproducing work under copyright. It eventually won that case in the States, which a number of authors resisted.

I have a briefing note here from The Writers' Union of Canada, which has done a number of surveys showing that writers' incomes are falling precipitously in all areas.

Mr. Brian Masse: I want to thank you for coming forth. We have to show some humility on this side that you have to disclose personal information like this. I find it odd, in terms of where we are now—and we just saw it again with this panel—that we know for a fact that most artists have not seen compensation improvements under the current situation, generally speaking. We hear everyone else fighting over the use of it and how much they should get from the spoils.

We need to remind ourselves as we try to find some solutions that maybe they don't reside just in this review of copyright. This exercise is probably going to be more about hopefully carving a path forward to get some type of justice, because we're just doing a review. In the meantime, you're right. The giants of Amazon, Google, and so forth will continue, and it's not sustainable.

Ms. Patricia Robertson: May I just add a comment?

Mr. Brian Masse: Yes, of course.

Ms. Patricia Robertson: There has been a great emphasis in this room on digital property, but e-books have levelled off. E-books are not becoming the be-all and end-all. Many people are returning to print.

In the information given by Ms. Romaniuk about acquisitions by libraries, I think she was not including course packs. She was talking about subscriptions to journals and so on, many of which are written by tenured professors who are getting tenured salaries. Independent writers like me are not. We rely on really cobbling together strings of income that include, ideally, being paid for writing.

None of us went into this to get rich. I had no dollar signs in my eyes that I was going to become J. K. Rowling. We do it because we love it. We do it because it's a call. We would appreciate compensation for reproduction of a work, which existed before the educational sector unilaterally reinterpreted—illegally, as the court has now ruled— what those tariffs should be.

Mr. Brian Masse: It's interesting, because there's more to it than just the digital age. I agree with your perspective. The same thing was said of radio. The same thing was said of bookstores. All you have to do is look at the United States. Independent bookstores have had a resurgence. It's similar to microbreweries and so forth. There's a cultural connection that goes beyond the words on the piece of printed paper or on the screen we're looking at.

Ms. Romaniuk, in terms of the purchasing that's being done, I'm wondering whether you've noticed a shift. We know that there are basically five large conglomerates that package and bundle for purchasing. In terms of your publishers, and I know there's a mixture, with Canadian authors in some of those publications, have those fees gone up? Have those increased over the last number of years?

● (1455)

Ms. Mary-Jo Romaniuk: I will answer that question in two ways. First of all, the journal publishers have certainly enjoyed an increase. In other words, for anything we're purchasing in journal format, those fees have gone up significantly.

In terms of licensing e-book content, it's a little bit different, because there are two kinds of e-book content. Some we license so that we have use, and every year we have a different package we get to use. There are other ones we buy outright, or we buy use in a more continual way. It's hard to compare those. It's like saying you have a print monograph one year that you pay a price for. If you buy a different one next year, is it a different price?"

Yes, overall, our fees have gone up, but at differing rates. I don't know if I'm answering your question.

Mr. Brian Masse: That's great. You are. You're answering my question.

Would you say that if you didn't have access to some of those, you would become a little bit more dependent if, say, some of those were consolidated and you had less choice in terms of the packages of journals and so forth? The trend I'm seeing, as we've travelled and seen from Ottawa, is that there seems to be almost a dependency model that's now being thrust upon school boards, universities, and colleges. They all seem to be subscribing to similar operations for purchasing. I'm wondering if that's happening here as well.

Ms. Mary-Jo Romaniuk: Well, part of it relates to the academic process and the need to publish in journals for tenure and promotion purposes and to share research from grants. It's a fact that people will share the research that comes from grants. As we move to open access models, some of that's changing. The library profession and others are trying to advocate for more open access, which will have a different effect on that cost.

Most of this discussion is more on the scholarly monograph piece. I think we continue to try to buy those in ways that support Canadian content. I'm not sure that there's any aggregation model. We buy from the Association of University Presses, which have banded together to sell to all of us. I would argue that they do better, because they now license through the Canadian Research Knowledge Network, which exposes their content to 67 institutions, many of which may not have purchased.

Again, it's a licensing model. How the creators are compensated, I can't honestly say.

Mr. Brian Masse: I'll come back. I have some time later.

It's interesting, because what's evident is that the creators are squeezed at every angle, and anyone who uses them never really knows how much they pay them.

The Chair: Thank you very much.

We're going to move to Ms. Ng. You have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you, everyone, for joining us today. It's great to be here in Winnipeg and to hear all your perspectives.

Ms. Greenberg, I'm going to pick up on a point you talked about by way of the recommendations you shared with us. You said that there needs to be clarification on fair dealing and the way it's interpreted and that you, as Manitoba publishers, would certainly be prepared to work with educators.

You didn't say it, but I guess I'll ask it. Would that also include the content creators and writers? The question actually is less for you than it is for the others. You put a proposition out there about an opportunity to perhaps provide some clarity on fair dealing and a way it could work that addresses some of the issues authors and content creators are seeing, which is a reduction in income, which we've certainly heard consistently, and to speak to educators about whether there is really an opportunity.

Based on what you said, is that something you, as an author or content creator, and you, as a university, would actually consider as an approach to help put some definition around the use of fair dealing that may be different from what it is today? This is to the authors and to the university. You suggested it as a recommendation. Would there even be interest in this?

● (1500)

Ms. Annalee Greenberg: I'm going to very quickly say something before Patricia.

What everyone seems to forget is that we had a really good system before, with the Access Copyright situation, which defined very clearly what was and wasn't usable. It was basically heaved out of here unilaterally by educational institutions, and without any consultation, as I mentioned.

It worked, and it worked in a relatively inexpensive way. We should be looking back at what worked in the past.

Ms. Patricia Robertson: I would echo that. It's certainly the position of The Writers' Union of Canada. I'm not here to speak for them, but they make it very clear in a briefing note they provided to me that we need, and we had, a functioning collective licensing structure before the educational sector came up with their own interpretation of what they should be paying. They're continuing to use our content, and content published by publishers, yet they have decided they don't want to compensate us.

Ms. Mary Ng: Ms. Andrew, would you comment?

Ms. Naomi Andrew: We've switched a little from fair dealing to Access Copyright, so maybe I'll first speak to Access Copyright and point out that the university was not using a lot of the material and content in the collection offered by Access Copyright. We were already licensing a lot of the content offered by the same collective under separate models, so we were paying—

Ms. Mary Ng: We've heard that, so maybe you can actually go back to the fair dealing.

Ms. Naomi Andrew: It would be limiting, and the Supreme Court has always encouraged a flexible approach as opposed to rigid application of fair dealing exemptions. I certainly have read those cases. They're well written and well thought out, and I support that reasoning.

I should also say that if we had that rigid application, it's not necessarily the case that universities would go back to Access Copyright or use more of that information. We are switching our models, and it's very likely that we would encourage professors and course packs to rely more on open access material and the material that we license. We have a lot of links in licensing, so our model is really shifting towards licensed material and that access.

Ms. Mary Ng: Ms. Andrew, to help me understand a bit better, I just want to ask you about access to indigenous works and some of the archival material you have from the Truth and Reconciliation Commission. We are very interested in understanding and learning about where some of those barriers are.

You talked about copyright being a barrier. Can you just expand very briefly on what that is, so we have some understanding of it?

Ms. Naomi Andrew: The main barrier is that a lot of the information that has come to the NCTR has been in the form of school records and pictures. I'm going to focus on pictures, because that is what people are more interested in. We don't own the copyright to that information, so it's—

Ms. Mary Ng: Who does?

Ms. Naomi Andrew: The creator. It could be the priest who took the picture.

Ms. Mary Ng: I see. Okay. I've got it.

Ms. Naomi Andrew: In order to have access—for example, if a survivor says, "I want a picture of my dad"—they'd have to go back to that person for permission. That's a real barrier.

Ms. Mary Ng: Okay.

My last question is to Ms. Rollins.

Can you compare for us your practices before fair dealings and after fair dealings? We heard about schools and institutions photocopying the works of creators. Can you talk to us about whether or not that practice changed after fair dealing? In other words, has the practice of teachers in schools remained the same?

● (1505)

Ms. Sherri Rollins: Yes. I was interested to see Ms. Greenberg's book beside me, because it's one that I know our educators have bought. There's some level of school-based decision-making whereby our educators go out and purchase books, such as *Indigenous Writes*, that are excellent. It isn't for them to photocopy the whole thing; it's for them to then tell other educators, "I've read this really great resource, and you should buy it."

Ms. Mary Ng: Is there a policy in place? I know we've talked to a lot of the post-secondary institutions, and they've put together a policy of how to comply with—

Ms. Sherri Rollins: If you're asking whether our policies changed before, during, and after fair dealing, the answer is no. We still have the same practices. What has changed is that we've had to let go our librarians and library technicians because of chronic underfunding of our education system. Some of those things have changed, let alone the ability to pay for new textbooks. Some of those things have changed in terms of the length of time that we keep textbooks around.

Ms. Mary Ng: Then there aren't any new policies for your teachers and educators on how to comply with the Copyright Act. Would you say that there are or there aren't any policies?

Ms. Sherri Rollins: Yes, I would say we have policies. We have several policies in terms of how to comply with the Copyright Act at the schools. One of the things we've done has been to centralize copying at the division level, not only to save costs but also so that we have some controls over it. Our schools cannot afford their photocopiers, let alone to make copies anymore, so we have centralized our print services.

The Chair: Thank you.

We're going to move back to Mr. Lloyd. You have five minutes.

Mr. Dane Lloyd: Ms. Andrew, you brought up a very interesting point about the archival footage. I don't think anyone on this committee wants to deny survivors and their family members—or researchers for that matter—the right to do research and use archival footage, but are priests, as you said, or content creators, challenging your ability to share this archival material, or is this just a theoretical barrier that could happen?

Ms. Naomi Andrew: It's not theoretical. It is a real barrier. We do have those records now. We have a mandate to share them, not only upon request but proactively under privacy legislation specific to the NCTR. However, often we cannot do that, so it is a real barrier.

Mr. Dane Lloyd: Why can't you?

Ms. Naomi Andrew: We don't own it and we have a hard time finding the creator of it. I would imagine we could build an exemption if a person who is an author or a copyright owner of a specific piece in the archive has an issue with it, but the problem is that for the most part we cannot find the person who created it. If we have a picture—

Mr. Dane Lloyd: Has any author or content creator—or a priest, as you mentioned earlier, or anyone—ever come to you and said, "Don't share this information; I'm claiming the copyright on this"? Has that ever happened?

Ms. Naomi Andrew: I can't speak to that, and I shouldn't speak on behalf of the director of the NCTR. I do know that when we receive information, the person who the information is about has asked for it to remain restricted, and we do have material that is restricted. We also make material restricted that we think is sensitive or inappropriate, even if no one has had it.

Sorry, I can't speak from the creator point of view, but NCTR will be submitting an independent brief. I would say that for a lot of it, we don't know who the author is.

Mr. Dane Lloyd: Okay. It's like an orphan work. I think we heard that term.

Ms. Naomi Andrew: Yes, it is, very much so.

Mr. Dane Lloyd: That's very interesting. We'll have to look—

Ms. Mary-Jo Romaniuk: I just want to add an important piece to that.

My understanding, from talking to our indigenous community and the NCTR people, is that part of this relates to having the indigenous people have to go back to the perpetrators of what they feel are the crimes and re-empowering them by giving them that power to say no. The act of asking is painful because it is giving power back, and they find that inappropriate.

Mr. Dane Lloyd: These people don't seem to exist, or we don't seem to know who they are, so is that empowering these people?

Ms. Mary-Jo Romaniuk: They would start by going back to the churches.

Mr. Dane Lloyd: I see. Okay. Thank you.

This line of questioning is for Ms. Robertson. You're the only one I haven't really gone after today.

Your resume is quite impressive and very interesting, because you have a lot of cross-sections of experiences. You're not only an author but someone who has taught at universities and schools, and you have also worked in libraries, as a writer-in-residence. Have you been able to see the interaction in copyright in all those institutions that you have worked in, in the university and in the library?

● (1510)

Ms. Patricia Robertson: Not in libraries, because I was largely meeting one-on-one with emerging writers or doing workshops. There seems to me to be a lot of copying going on in my English department at the University of Winnipeg. I mean, it's not that everybody's relying on digital, but even if they are, there's still a creator of that digital content, and there still needs to be a way to license, to establish a collective licensing regime, whether or not it's Access Copyright, that acknowledges the creators. If we don't have creators, we don't have a culture.

Mr. Dane Lloyd: Yes, I think that's very important.

Ms. Patricia Robertson: We need some way.... Everybody else is getting compensated, from the administrators to the lawyers to the printers to you name it. It's always the writers. The number of times writers hear, "Well, just contribute to this anthology. No, we can't pay you, but the exposure...." Well, you can die of exposure, as you know.

Voices: Oh, oh!

Mr. Dane Lloyd: This is less of a factual thing but more about how you feel. I understand that getting your $1,100 a year previous to that case might seem like change, as you said, and now you're getting $63. I'm not trying to denigrate the importance of that income stream, but do you feel that it hurts you more as a person, your feelings and your integrity, or that you feel your work is being taken from you? It's not about the level of compensation, but rather the very fact that you're not being compensated at all. Is that accurate?

Ms. Patricia Robertson: Well, I would say it's both. I mean, it's real money that my husband and I need. My husband is currently ill, so I'm the sole earner in the family. Yes, I think writers across the country feel that it's a slap in the face, essentially.

You may remember back when the Internet got going, there was this very popular statement, "Information wants to be free." Well, now everybody thinks everything should be free, as though it just emerged out of the ether. Well, it doesn't and it didn't. It's created by writers and other artists, and we need to be compensated.

Thank you.

The Chair: Thank you.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Well, thank you very much. Thank you for acknowledging that we're on the lands of first nations of the area, the Métis people as well. I want to thank people for that.

Second of all, of course, "Go, Jets, go." They're playing tonight.

Seriously, I'm going to ask the University of Manitoba a question. How do you apply and enforce copyright policy for the preparation of course packs again?

Ms. Naomi Andrew: I'll start a little bit of intro while Althea is coming.

Our course packs are printed at the University of Manitoba on a cost recovery basis. No profit has been made. They are created through the bookstore.

I'll let Althea expand on that. She's our copyright strategy manager.

Ms. Althea Wheeler (Copyright Strategy Manager, University of Manitoba): Yes. The University of Manitoba relies on our electronic licences, for example, which permit course pack use, and transactional licences, etc., and generally our copyright policy as we produce course packs, and yes, they are all centrally reviewed for copyright compliance.

Mr. Terry Sheehan: How many course packs are there in a year? I'm wondering about last year, in particular, compared to previous years.

Ms. Althea Wheeler: Our course pack use is certainly declining. They are still used at the university. In 2018 there were about 29,687 course packs, whereas previously, in 2014, there were over 35,000. The number is going down.

Mr. Terry Sheehan: Are they using other means, electronic means, etc.? We've heard from other universities that course packs are going down, but they're using different systems.

Ms. Althea Wheeler: Yes, absolutely. The learning management system we have, UM Learn, would be used.

Mr. Terry Sheehan: I'm sorry; which one did you say?

Ms. Althea Wheeler: We use something called UM Learn. It's based on Desire2Learn, which you may have heard of before. That's our learning management system. Again, it would be the same situation. We would be heavily relying on our electronic subscription within that system.

Mr. Terry Sheehan: Do you have a sense of how often your faculty, staff, or students rely on fair dealing exceptions? Are you tracking this activity?

● (1515)

Ms. Althea Wheeler: Yes, we have a sense of that. I can definitely say that in course reviews we do in UM Learn, while fair dealing can be applied, it's usually for digital kinds of materials, things that you might find online to begin with, such as reports, etc. That certainly seems to be the highest percentage of fair dealing we see in the learning management system.

Quite frankly, since we have these electronic subscriptions and licences, it's just very easy for a professor to link to something that's already in the library catalogue. There's not as much, say, printing and posting of PDFs.

Ms. Naomi Andrew: I just wanted to add that we do have a service that we started called Copyright Solutions, which allows faculty members, with respect to their online courses, to come to the copyright coordinator and have their systems reviewed. The copyright coordinator will ensure they are copyright compliant and often recommend alternatives and licensed material that we already have that the faculty member may not be aware is open access. That is a service we offer to faculty.

Mr. Terry Sheehan: In testimony we've heard, Universities Canada said that their members pay more now than ever before for access to copyright material. Is that true for the University of Manitoba?

Ms. Naomi Andrew: Sorry?

Mr. Terry Sheehan: Universities Canada stated that its members pay more now than ever before for Access Copyright material. Is that true for the University of Manitoba?

Ms. Naomi Andrew: We don't have a licence with Access Copyright, but we are paying more than ever in terms of acquisitions in general, whether that be print or digital.

Mr. Terry Sheehan: That was "to access copyright", not "Access Copyright". Sorry.

Ms. Naomi Andrew: Yes, that's our similar trend. Our copyright acquisition fee increased.

Mr. Terry Sheehan: Just finishing up on this particular subject, because I've been asking some questions as well, what resources do you make available to faculty and staff and students to ensure compliance with copyright law? How do you assess the effectiveness of those resources?

We've heard some statements like "We put a poster beside the photocopy machine." That's not quite it. We've heard there are some more elaborate processes and policies in place. What does the university do?

Ms. Naomi Andrew: We have very robust copyright compliance. Yes, we do have our posters. We have three people on our copyright staff. We have Althea, who is our copyright strategy manager, as well as our copyright officer and our copyright coordinator. Our copyright coordinator's main role is to educate faculty and offer them review of course materials.

We provide advice online and in person on the phone to graduate students. We present to approximately 700 people per year. I've just created recently an online tutorial for faculty and staff, and it has seven modules that cover how to prepare and how to be copyright compliant. We have numerous policies in place: academic misconduct, responsible conduct of research. Most recently, a use of copyright-protected materials policy was approved by the audit and risk management committee.

I'm trying to think. We do audits periodically, and if we do see any issues with respect to those audits, we will recommend changes for transactional licences switching to licensed material. If I look at the entire university, people are dedicated to copyright compliance, including the bookstore and our libraries, and in extended ed we have five full-time equivalents dedicated to copyright compliance.

The Chair: Thank you.

We go back to you, Mr. Lloyd, for five minutes.

Mr. Dane Lloyd: You made an interesting comment, Ms. Andrew, about how one of the reasons you are no longer with Access Copyright, as in the company, as Mr. Sheehan said, was that there was a lot of duplication and you were already paying for the rights of many things that Access Copyright was providing. Can you explain how that happens? How is there duplication? It seems to me that somebody pays for the right to sell a published work. How is somebody else also available to pay that?

It seems there is only one owner, or one licence-holder, so how can you be accessing copyright-protected materials by paying one person but not actually paying somebody who also holds the licence for it?

● (1520)

Ms. Mary-Jo Romaniuk: We'll see how we answer this. I hope this answers your question.

When we license material in the library, which is what she's referring to, we pay a licence fee to the publisher, who again, we assume, divvies it out appropriately. That is how we license material. Once it's licensed, we have the right to use it, and individuals use it. If we license five simultaneous users, five people can use it at the same time. If we license one, they take their turns.

The fee for use is already paid in that fee. When we were paying Access Copyright, of course you pay by head count, so in essence we've already paid the fee for most of that licensed material and, as you can see, the both our dollar value and the kinds of licences have expanded greatly, so the duplication would only be worse.

Mr. Dane Lloyd: Would you say that you're paying for copyright? Are you just bypassing Access Copyright and paying the publishers directly?

Ms. Mary-Jo Romaniuk: That's the model that's there. Access Copyright is one mechanism. The other mechanism, of course, is for us to purchase licensed material from publishers, which we have always done.

Mr. Dane Lloyd: Are these publishers publishing works that Access Copyright was also selling to you?

Ms. Mary-Jo Romaniuk: There can be multiple ways you can acquire a work or rights to use a work. Access Copyright is one.

Ms. Althea Wheeler: If I can add, I think part of the difference is whether we're looking at something that is born digital versus the print version, and we are increasingly purchasing those born-digital versions of things. I think that's where the difference is in who is getting paid.

Mr. Dane Lloyd: I'd like to switch this over to Ms. Greenberg.

What is your response to that? When you're a publisher, do you work with Access Copyright? You seem to get some revenue from them.

Ms. Annalee Greenberg: I think most Canadian publishers do. I think their repertoire is from Canadian publishers, but I'm just mirroring what Pat said. We have gone, from 2013 to 2017, to 12.5% of what we got.

Mr. Dane Lloyd: Are other publishers in your industry prospering right now because the universities are switching to them, or are all publishers currently hurting in the country?

Ms. Annalee Greenberg: I wish I could say that we are in the rooms and we are seeing people copying. We get anecdotal clues about what people are doing, and Wayne Antony, who is a publisher at Fernwood whose work is mostly post-secondary, sent me a note of his experience, which I'm going to share, if that's okay. It might shed some light on what is happening.

As you know, I think it's Universities Canada that put out a guide for copyright, and the ministers of education—I don't know the full acronym—also put out a book called *Copyright Matters!*, so I think a lot of educators are going with that, which basically says go for the 10% and don't worry about it.

This is from Wayne. He said:

> A few days ago, we received a request for a desk copy of a book that will be released this spring. This is from a prof at Carleton U. She also sent her course outline with the request. The course outline (for a senior undergraduate course) shows no textbook but rather a list of book chapters and journal articles that will be posted for the course on the Carleton LMS. It included several chapters from Fernwood books, including 2 from a book yet to be published and 2 from a book recently published, and single chapters from other Fernwood books. We have had no request from Carleton for permission to reprint these chapters.

Mr. Dane Lloyd: That's interesting.

I'm sorry to cut you off, but is it plausible that there are other publishers out there who are being paid, and maybe they're just not going through Access Copyright and you?

Ms. Annalee Greenberg: Possibly, but I would say before these.... I work mostly with the K-to-12. Before the modernization came, quite frequently we would get requests from teachers. We don't anymore. They don't ask anymore; they just interpret the *Copyright Matters!* booklet. We would get an email saying, "I would really like to use a chapter from this. What can you do?" and we'd arrange something. We get nothing like that anymore.

Michelle Peters, who is the AMBP executive director, may have something to add to that.

Ms. Michelle Peters (Executive Director, Association of Manitoba Book Publishers): Yes, I just want to add quickly that all of our members have reported that their Access Copyright revenues are down. As well, direct copying requests are down.

Mr. Dane Lloyd: The universities that contact you directly are also not doing that either.

Ms. Michelle Peters: That's down as well.

● (1525)

Mr. Dane Lloyd: Okay. That's interesting.

Thank you.

The Chair: I just want to get your name and title on record again.

Ms. Michelle Peters: I'm Michelle Peters, Executive Director of the Association of Manitoba Book Publishers.

The Chair: Perfect. Thank you. That's just for the record.

We're going to move to Mr. Sheehan. You have five minutes.

Mr. Terry Sheehan: Thank you very much.

My next question is going to be for Sherri Rollins.

I used to be a school board trustee many years ago. In Manitoba, how does the funding work? You referred to some of the funding being down for your libraries, for library services. Do you set a mill rate, or is it provincially driven?

Ms. Sherri Rollins: Thank you for asking that, because we still set the mill rate. We're one of the few provinces that still have the ability to set the mill rate.

Mr. Terry Sheehan: Okay, and then you still receive some provincial funding for—

Ms. Sherri Rollins: Yes. We receive it, and in some cases school boards across Manitoba are almost 50-50. We're seeing the province vacate the space. It used to be around 80% and 20%, which we've always asserted is the right place to be, with the province being at 80% and our being at 20% and property taxation setting the mill rate. Some school divisions in the province are at 50-50, and an eroding 50% at that. We're at an eroding 60-40, and we have about roughly 2.3% from other sources, including the federal government, which compensated us last year for the increase in refugees.

We have 5,000 staff, so about $287 million of our roughly $406 million budget is for teaching staff. That's not a lot to keep the lights on.

Mr. Terry Sheehan: It's always the number one cost.

Do you have first nations within your board, or are they urban indigenous?

Ms. Sherri Rollins: Some reserves in Manitoba still do not have high schools, so yes, we have students from sovereign first nations across the province who end up coming to our school. Clearly, in Winnipeg we're an indigenous school division, as all school divisions are in Manitoba, and about 30% of students are declared indigenous in our school division.

Mr. Terry Sheehan: I was leading up to the K-to-12 education that's happening. Of interest to me and to this committee is copyright as it relates to indigenous culture. We're asking universities and colleges, and a lot of times it's a very oral tradition. Sometimes it's in a sacred form. How does your board utilize elders and other traditional teaching methods in your school board? Give some examples, perhaps.

Ms. Sherri Rollins: We have a traditional knowledge keeper, Dr. Myra Laramee, who herself is an author, a creator of content, if that's what you mean. We have several elders attached to schools, not just our traditional knowledge keeper. They create curricula, curricular documents, books. Dr. Laramee creates videos to share.

Mr. Terry Sheehan: The elders have that content.

Ms. Sherri Rollins: Yes. Often she's the owner of the content. She publishes through publishers. I'm not just talking about her specifically, but other elders and teachers publish through Manitoba publishers. We have teachers who have contributed to compilation documents. We have artists in our school divisions. They're creators of their content as well.

Mr. Terry Sheehan: Is that all the time, or does MP Jowhari have a chance to question?

The Chair: You're out of time, sorry.

Our last question for the panel is from Mr. Masse.

Mr. Brian Masse: Thank you.

With regard to the Copyright Board, is it reform, or maintain the status quo, or are there any suggestions on improving it in the short time we have? I have two minutes, so I'll start with Ms. Wheeler, if you have any comments, and go across. If you don't, take a pass. I'm just trying to get a snapshot of the Copyright Board.

● (1530)

Ms. Althea Wheeler: I think our comments are probably similar to those you've heard from other universities. Right now the process is quite slow. There could be more case management. The retroactive application of tariffs is somewhat problematic. Also, just on the issue of interrogatories, they should be for a specific purpose. Perhaps when an organization—for example, Universities Canada—is involved, a representative number of institutions could be subject to the interrogatories rather than all. Those are our general comments.

Mr. Brian Masse: That's good.

Ms. Robertson, would you comment?

Ms. Patricia Robertson: As I said earlier, I think we need a functional collective licensing regime that recognizes the rights of creators to be compensated. I don't know specifically how the Copyright Board is involved in that.

Mr. Brian Masse: Okay.

Ms. Rollins, would you comment?

Ms. Sherri Rollins: I'd like to go back to something you said. A lot of the comments I have are perhaps not for this committee. In the school system, you were making comments that—

Mr. Brian Masse: I only have a few minutes on the Copyright Board. If you don't have a position on it, then I'll come back to you if I have free time, but I want to get across the board here, if I can.

Ms. Sherri Rollins: I'll have to say, then, maintain the status quo.

Ms. Annalee Greenberg: We support the concerns of the Association of Canadian Publishers about the timelines and process, the amount of time it takes to have something heard and all the stuff that happens in the background, because it can take many years for a case to come through. Streamlining that process is important.

The other one is enforcement. That's a big issue. That mechanism has to be improved.

That's about it.

Mr. Brian Masse: Do we have time for Ms. Rollins to finish?

The Chair: There are 10 seconds remaining.

Ms. Rollins, did you want to make another brief comment?

Ms. Sherri Rollins: Yes. I just handed my card over to Ms. Greenberg because I agree with her statement that there should be more clarity around fair dealing. As a board, we can do that. We do have policies, but more clarity could be put to that, and this committee could help in that regard for sure.

The Chair: As you can see, it's not an easy subject. With everything we've been hearing and with each panel we have as we continue to go forward, we get more questions that we need to be asking our panellists. The questions are getting harder and harder, and it's not an easy thing to do, because we know it's such an emotionally charged subject. Bear with us. We have a lot more to do. This is a study that's not going to be finished overnight. We'll likely be seeing witnesses until the end of the year.

On that note, I'll take a moment to thank everybody for showing up to our panel today and playing along with us.

We have a second panel today. We will suspend until our next session at four o'clock.

Thank you.

• _____ (Pause) _____

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● (1600)

The Chair: Thank you very much, everybody, for coming to the second panel on the legislative review of copyright.

It's important to understand that part of the role of the committee is to ask really good questions. Sometimes they're not comfortable questions, but if we don't get good data into our report, then maybe we won't make good recommendations.

We're doing the statutory review and are on a five-day tour. This is day four. We're in Winnipeg. Our study will continue for about a year. We have divided things up into sections.

Today, the second panel focuses on indigenous concerns. I want to make sure that you understand that this is not the only time. When we go into phase two, there will be a focus on indigenous concerns as well, so whatever information you present to us today will be a good introduction that will help us when we are introducing more witnesses in phase two of the study.

Today we have, from the Winnipeg Arts Council, Alexis Kinloch, Public Art Project Manager, and Dominic Lloyd; from the Manitoba Metis Federation, Sharon Parenteau, General Manager, as well as Georgina Liberty; and we have, as an individual, Lynn Lavallee, Vice-Provost, Indigenous Engagement, University of Manitoba. We also somebody else coming who is late. We'll introduce her when she arrives.

We're going to start with the Winnipeg Arts Council. You have five minutes, or seven minutes if you need it.

● (1605)

Mr. Dominic Lloyd (Program and Arts Development Manager, Winnipeg Arts Council): Thank you, Mr. Chair.

Thanks to the clerk for accommodating us.

My name is Dominic Lloyd, and I have been managing arts funding programs with the Winnipeg Arts Council for eight years now, prior to which I worked in the Canadian music industry for almost a dozen years.

The importance of the arts to our quality of life, to the cultural, social, and economic well-being of Canada, cannot be overstated. However, even more important is the value of art itself. The creative ingenuity of people for its own purpose. Experiencing the arts provides us the capacity to perceive, to feel, to interpret the world, and to build empathy.

What is less often stated but should always be at the forefront of our discussions is the recognition of the individual artist as the primary source of creative activity in all artistic disciplines. Without artists, quite simply, there's no art. This is what drives the Winnipeg Arts Council, and we ask today that you too keep this in mind as you cross the country and develop legislation that will have a great impact on the entire Canadian cultural ecology.

Innovation is a word that's bandied about all the time as though it were a new concept, but by definition, artists are innovators. They've always been the ones looking for new ways to express our goals as a society and to interpret the world. It follows that where conversations around ownership and financial rights of creative material occur, they must involve artists, first and foremost, and their interests must remain paramount in your deliberations.

Here in Winnipeg, we know that the arts are a significant contributor to the economy. Independent research from PRA in 2014 showed that the arts employ over 26,000 people in our city, and contribute over a billion dollars to our GDP. It sound impressive until one considers Hill Strategies' research from the same year, which showed that artists in Canada are earning, on average, $33,000 a year, which is high when you consider the income of artists in the visual arts, music, and dance.

We know that artists in Canada do what they do with very little money, but the work they do is essential to building our community, our identity, and our economy, and their interests above all must be included in your discussion.

Ms. Alexis Kinloch (Public Art Project Manager, Winnipeg Arts Council): I am Alexis Kinloch, and I am an employee of the Winnipeg Arts Council.

I'd like to acknowledge that we're on the original lands of the Anishinaabek, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis Nation.

It's crucial that the government work closely with indigenous communities to make room in these laws for indigenous arts practices and knowledge-sharing to be recognized in a way that is decided by indigenous people and is respected and protected in the law. I urge you to make that a key priority throughout this review.

I've been a visual artist and writer for 14 years and I've worked in arts administration for eight years.

I thank you for the opportunity to speak about copyright and how it impacts artists. I would like to note, for the record, that I find it extremely problematic and scary that such an important public review was announced only two weeks before the event and that the invitation to speak came only two days before the engagement, leaving very little time to prepare.

Copyright is an important source of income for visual artists as they get paid when their works are exhibited, reproduced, or copied for classroom use. This becomes important because visual artists earn far less than the average Canadian, and three changes to the act could help improve their income potential.

For several years, CARFAC, the national association of visual artists, has been advocating for an artist's resale right, a royalty that artists receive when their work is resold publicly. They recommend that artists should receive 5% on future eligible sales. It is common for artists to sell their work cheaply early in their careers, and usually, if that work increases in value later and is resold, they are not paid. For example, Inuit artist Kenojuak Ashevak's famous print, *The Enchanted Owl*, originally sold for $24 and was later resold for over $58,000, for which she received nothing.

The resale right has been around for almost 100 years and it has been adopted by at least 93 countries.

Another change that artists are asking for relates to the exhibition right, which mandates that museums pay fees to artists when their work is exhibited publicly. Currently public museums and galleries are not legally required to pay fees to artists if their work was made before June 8, 1988, the date on which the right was enacted. It was argued that it minimized the financial impact that the new right could have, particularly for works in museum collections. However, this has led to discrimination against senior artists, as they are not always paid when their work is exhibited. This discrimination could be a charter issue. The exhibition right should apply to the normal term of copyright, the life of the artist and their estate, for 50 years after death.

The third request from artists is to place some limitations on the fair dealing changes that were made in 2012. Fair dealing has implications for all disciplines in the arts. Each year art works and publications are copied for use in schools, and visual artists are paid for those copies, but many universities are no longer renewing licences for that use, believing that they no longer have to because of fair dealing. The act doesn't specifically define what is fair, and while lawyers battle it out, artists' incomes are eroding. Between 2013 and 2017, payments to visual artists from Access Copyright declined by 66%. In 2012, we were told that changes to fair dealing would not have a significant effect on artists, but these numbers say otherwise.

We are not asking to get rid of fair dealing, but the education exception should not apply when it is possible to license work that is commercially available from a copyright collective or rights holder. This is how it works in the U.K., and we would like to see a similar model adopted in Canada.

Thank you.

● (1610)

The Chair: Thank you very much.

Before we move on, on another point, please talk more slowly. We do have translators and we are recording everything. Because this is for the House of Commons we must have French and English, so as you're speaking, it's automatically being translated in the back.

Ms. Alexis Kinloch: I was trying to get in a lot of information in a short time.

The Chair: I know. That's why I gave you an extra couple of minutes. Thank you.

We're going to move to Ms. Sharon Parenteau, from the Manitoba Metis Federation. You have the floor, please.

Ms. Sharon Parenteau (General Manager, Manitoba Metis Federation Inc.): Thank you.

Good afternoon. My name is Sharon Parenteau. I am the General Manager of Louis Riel Institute, the culture and education arm of the Manitoba Metis Federation. We would like to thank you for providing us with an opportunity to present to the Standing Committee on Industry, Science and Technology as part of the five-year review of the Copyright Act.

We recommend that the committee consider an alternative approach to dealing with Métis cultural property and develop substantive changes to the Copyright Act to protect Métis cultural property.

The Métis nation has a proud heritage with a distinct culture. Property stemming from Métis culture can include traditional indigenous knowledge. Iconic images of the Métis, appropriating Métis artistic cultural expression, and representations of the Legislative Assembly of Assiniboia are three key examples of Métis cultural property.

The use of Métis cultural symbols without the consent of the Métis nation and the abuse of Métis history, and identity theft, are key concerns in the protection and continuance of Métis culture for generations to come. The protection of Métis cultural property is complex and disparate, and will require expenditure of Métis resources to address. The Manitoba Metis Federation has developed the Manitoba Métis community research ethics protocol to protect the citizens of the Métis nation by ensuring that research involving the Manitoba Métis community is culturally appropriate and considers the distinction of the Métis nation. The MMCREP is an act of self-government to protect and promote the culture, history, values, collective rights, and interests of Métis citizens.

The MMCREP generates a centralized research protocol where the MMF home office is the first point of contact for external and internal researchers. Researchers work closely with the MMF to direct them to departments, affiliates, regions, and locals in the context of their projects, thus ensuring that the Manitoba Métis community's cultural, historical, and intellectual property is appropriately reflected and preserved.

Current copyright laws do not fully protect Métis cultural property rights. For example, fixation does not protect oral knowledge handed down from generation to generation. Works that have not been fixated in a tangible form of expression are not protected under the Copyright Act. Since fixation is one of the prerequisites of copyright protection, this limitation allows expropriation of traditional knowledge.

Advocacy through appropriate political channels is required to align Canada's intellectual property regime with the cultural property rights of the Métis nation. There are two ways through which this could be achieved: a self-government agreement affording the Métis nation the authority to legislate to protect its cultural property, and legislation to directly address one or more of the intellectual property issues specifically from a Métis perspective and context.

There are existing Métis nation protocols that have been established by the MMF that are based on traditional knowledge handed down from generation to generation. The MMF has taken this traditional knowledge, such as the traditional harvesting methods described in the MMF's Métis laws of the hunt, traditional land use teachings, which the MMF collects in its traditional land use knowledge studies, and the original Métis names for landmarks and historical communities. These and other protocols are documented in Louis Riel Institute publications.

We define traditional knowledge as the body of knowledge shared by indigenous people and held by and transmitted between indigenous representatives that supports traditional land use for the benefit and well-being of indigenous peoples. Similarly, people come to understand the ecology of their surrounding environment through years of first-hand experience and inherent cultural understandings of relationships between humans, animals, lands, and water. People also come to understand the ecology of their environment through teachings that have been passed down through relations or within a community. This type of knowledge is often referred to as traditional ecological knowledge.

● (1615)

Existing traditional knowledge is carried by the knowledge keepers of the community, through oral transmission. There are fewer knowledge keepers and citizens who can speak the traditional language of Michif, making it difficult to preserve and revitalize.

An alternative way to preserve the oral history and knowledge is to recreate it in different forms. While the MMF has made considerable efforts collecting and using traditional knowledge for ecological purposes, the artistic community has only begun to explore this issue. In the age of digitization, artistic cultural expression is often appropriated by others with no safeguards.

Changes to the Copyright Act need to give the Métis nation the authority to legislate and protect its Métis cultural property. Our traditional knowledge is usually transmitted orally, through storytelling. Using the Manitoba Métis community research ethics protocol ensures researchers are working with the Manitoba Métis community to gather and protect Métis cultural property. Research gathered is subsequently housed in the Métis knowledge base, and is protected by the Manitoba Métis Federation, which is the governing body for the Manitoba Métis community.

Thank you.

The Chair: Thank you very much.

I want to welcome our new guest, Camille Callison, indigenous services librarian, and Ph.D. candidate from the University of Manitoba. We're going to give you a chance to acclimatize.

We're going to jump right to Dr. Lynn Lavallee. You have up to seven minutes, please.

Dr. Lynn Lavallee (Vice-Provost Indigenous Engagement, University of Manitoba, As an Individual): Dr. Lavallée, sorry.

The Chair: I'm sorry.

Dr. Lynn Lavallée: That's okay. I typically don't put my title. I try to be humble, but I got lectured by an elder once to ensure that I use it.

[*Witness speaks in Ojibwe*]

My name is Dr. Lynn Lavallée. I'm currently the Vice-Provost for Indigenous Engagement at the University of Manitoba. I'm an associate professor with expertise in the area of indigenous research ethics.

While a faculty member at Ryerson University in Toronto, I served for over a decade on the university's research ethics board, the REB. In my final four years, I was its chair.

I'm coming to you as an Anishinaabe person who understands traditional knowledge and ceremony from my own limited perspective, while also understanding the importance of promoting creativity and innovation with respect to research and the Copyright Act.

I would like to speak to the tensions I have witnessed with respect to indigenous knowledges and ethical research with indigenous peoples. What I will share is not new and has been discussed for well over a decade. However, we are still having these conversations, which indicates we have not achieved an appropriate balance with respect to indigenous knowledges, intellectual property, and copyright. I hope my involvement here today is not to simply check a box so as to ensure consultation with indigenous peoples, but to achieve further progress in the area of protecting indigenous knowledges, particularly as it relates to research and copyright.

Marlene Brant Castellano has defined indigenous knowledge as traditional teachings being passed down through the generations, empirical research being gathered over time, for instance, observing how medicines can alleviate certain illnesses—and when she says "medicines", she means traditional medicines—and spiritual knowledge gained through dreams and revelations. Marie Battiste talks about indigenous knowledge as not being a binary of western knowledge, and Willie Ermine speaks of the ethical space between indigenous knowledge and western knowledge, with this ethical space overlapping. This is the space in which we need to do more work to protect indigenous knowledge.

The Copyright Act not only allows for the appropriation of indigenous knowledge but, as Younging has stated, it also opens the door for the legalized theft of indigenous knowledge, because copyright gives copyright to the person who has collected the information. Even though intellectual property is defined as "creations of the mind", when a researcher speaks to indigenous people, whether they're elders or traditional knowledge holders, the knowledge that is shared is ultimately the creation of the mind of the person sharing the knowledge, yet copyright goes to the collector of the information.

Complicating that even further, some of our indigenous knowledge is not seen as the creation of the mind of the individual. Oftentimes, the knowledge is passed down through the generations, as Sharon has stated. It is not the creation of one person's mind, so intellectual property does not translate for indigenous knowledge. We cannot own indigenous knowledge; it is not our intellectual property as an individual, so for me this is a foundational tension between indigenous knowledge and western knowledge, copyright, and intellectual property.

● (1620)

With respect to indigenous knowledge, copyright is contributing to the need to protect indigenous knowledge and not share it.

As you know, article 11 of the United Nations Declaration on the Rights of Indigenous Peoples states that we need to "redress through effective mechanisms...cultural, intellectual, religious and spiritual property taken without...free, prior and informed consent or in violation of...laws, traditions and customs."

I want to add that, given the Copyright Act and that academic institutions defer to it, informed consent is not being obtained because of the conflict between what is stated in the Copyright Act and the federal guidelines used by research ethics boards to review research protocols involving people.

Academic institutions are required to have any research involving people undergo an ethical review via their respective research ethics board. REBs implement the federal guidelines, the tri-council policy statement on ethical conduct for research involving humans, otherwise known as the TCPS. The TCPS underwent major revisions in 2010, with chapter 9 focusing on ethical conduct in research with first nations, Inuit, and Métis peoples.

The chapter discusses the importance of community engagement throughout the entire process of the research, from the inception of the research idea to dissemination of the findings. It articulates that the research practices should be guided by a respect for and accommodation of first nations, Inuit, and Métis priorities on joint ownership of the products of research, and maintaining access to data for a community. The TCPS also notes that we should defer to the applicable federal, provincial, and territorial legislation, namely the Copyright Act, which gives copyright to the collector of the information, not the creator or the keeper of that knowledge.

● (1625)

The Chair: Thank you very much.

Finally we have Camille Callison. You have up to seven minutes.

Ms. Camille Callison (Indigenous Services Librarian, Ph.D. candidate, University of Manitoba, As an Individual): Thank you.

My name is Camille Callison and I am honoured to be here today presenting to the Standing Committee on Industry, Science and Technology. Thank you for the opportunity to join you today, and thank you to the committee members for the important work that you do on behalf of all Canadians, including indigenous Canadians, first nations, Métis, and Inuit peoples of Canada.

I also want to acknowledge the elders, my fellow panellists, and all the good people gathered here today.

I am honoured to be here today in this historic gathering place where the Red and Assiniboine rivers meet, currently known as The Forks, and to be a guest living here in Treaty 1 territory within the heart of the Red River Métis homeland known as Winnipeg.

My name is Camille Callison and I am from the Crow clan, the Tsesk iye, of the Tahltan Nation located in northern B.C., Yukon and Alaska. I'm presenting here today as an individual, so I wanted to introduce myself.

As my late grand uncle Robert Quock taught me, we belong to the land, so it's important for me no matter where I am to acknowledge where I come from. We are the people of the Stikine River, Canada's Grand Canyon, and the home of the sacred headwaters where the Stikine, Skeena and Nass headwaters flow from, creating northwest B.C.'s biggest salmon-producing rivers.

On October 18, 1910, also known to us as Tahltan Day, my great grandfather Grand Chief Nanok Quock, another chief, and 80 Tahltan witnesses delivered the Tahltan declaration signed and delivered to the representatives of the Canadian governments and the British crown, which states that we have never ceded or surrendered our land at the cost of our own blood from time immemorial. This is still true today, and we continue to rely on the wealth of our land for subsistence and what lies below it for economic opportunities and employment.

I hope to honour my heritage today by facilitating a better understanding of why the Copyright Act needs to respect, affirm, and recognize indigenous peoples' ownership of their traditional and living indigenous knowledge, thereby facilitating respectful relationships between indigenous people and Canada.

For the purposes of this presentation, "indigenous" refers to the first nations, Métis, and Inuit people of Canada.

Currently I am the indigenous services librarian and liaison librarian for anthropology, native studies and social work, and a Ph. D student in anthropology, at the University of Manitoba. I also am the vice-chair and indigenous representative on the board of the Canadian Federation of Library Associations, CFLA-FCAB, and in that capacity I chair the indigenous matters committee and I'm a member of the copyright committee.

I also sit on numerous other boards, including the indigenous matters section of the International Federation of Library Associations, the indigenous advisory circle of the National Film Board, and the Canadian Commission for UNESCO, the Canada Memory of the World Register, and the Sectoral Commission, Culture, Communication and Information of UNESCO.

I'd like to begin today by talking about why it's important that indigenous knowledge be affirmed, respected, and protected under the Copyright Act. Indigenous knowledge is dynamic and has been sustained and transformed throughout time. Indigenous people continue to produce new knowledge in new media, including the music, theatre, dance, photographs, film, poetry, literary expressions, language applications, blogs, social media, and digital collections, etc.

Library and archives and other cultural memory institutions often hold indigenous knowledge and traditional cultural expressions in their collection as a result of research or appropriation or participation with indigenous communities and authors. In some cases, under the Canadian intellectual property regime, indigenous people from whom that knowledge originated and who are the traditional intellectual property holders have inappropriately lost their ownership rights. Who holds the legal copyright to the knowledge or cultural expressions under Canadian copyright is often contrary to indigenous notions of copyright ownership.

Parallel to western culture, indigenous people regard unauthorized use of their cultural expressions as theft. The indigenous world view includes the understanding that indigenous knowledge should only be transferred with the owner's permission from the originating people, and should be within that method of transmission.

As Canada works toward reconciliation, a fair and balanced intellectual property system works for everyone, including indigenous peoples.

● (1630)

In their knowledge systems, indigenous people have developed this wealth of indigenous knowledge that they rightly wish to protect under their constitutional rights as Canadians. They also wish to create their own knowledge protocols and have those protected under the Copyright Act. Therefore, Canada needs to acknowledge indigenous people to maintain, control, protect, and develop traditional knowledge and traditional knowledge expressions within our current intellectual property right regime in order to access, use, and protect indigenous knowledge by developing appropriate protocols with indigenous people. Essentially, reconciliation is about establishing respectful relationships with indigenous people.

I'm noticing the time, so I'm going to skip ahead in my speech and talk about the protection of indigenous knowledge and the truth and reconciliation committee that was formed in 2016 to address the Truth and Reconciliation Commission's calls to action. I'll talk about our recommendation 8, which asked the Canadian government to affirm and protect indigenous knowledge under the existing Copyright Act.

I want to recommend that indigenous knowledge be respected in the public domain, and that we do that in keeping with the UN Declaration on the Rights of Indigenous Peoples, particularly article 31. I join with CFLA-FCAB and its indigenous knowledge and copyright statement that was released last week in asking that the copyright reform "respect, affirm, and recognize indigenous people's ownership of their traditional and living respective indigenous knowledge." This would allow for Canada's diverse indigenous people to develop indigenous knowledge and cultural expression protocol agreements that reflect their diverse cultural heritage and traditions. One nation's protocol concerning the sharing of knowledge and cultural expression will be different from another's, so there needs to be room left for indigenous nations to work with their elders and knowledge keepers to develop these protocols.

Meduh—thank you, in English— for the opportunity to speak with you today. I ask that you join me and other Canadians on the path towards reconciliation. I ask that you walk, not in front of me or behind me, but that you walk beside indigenous people to create a new Canada where all people are treated equally and are respected fairly under the law. I welcome the opportunity to answer questions you may have.

The Chair: Thank you very much.

We're going to move right to questions. Mr. Sheehan, you have seven minutes.

Mr. Terry Sheehan: Thank you very much to all our presenters. Of course, I would also reiterate what I reiterated the last time, to acknowledge that we are on the traditional territories of the first nation people of this area, and also of the Métis.

This subject is very important to us as we are trying to review the copyright law. It has been said many times that it's not adequate to cover indigenous peoples' art, their culture, it's extremely important.

I'm not indigenous. My wife and children are Métis. Sault Ste. Marie, where I'm from, is a traditional area. People used to come from all over the Midwest and the Prairies to meet along St. Marys River because of the whitefish. It became an area to which everyone was coming to fish, to bring back to their communities as far away as here in Manitoba sometimes. It started to happen around that area, thousands and thousands of years before the Europeans came. There were, naturally, powwows in different forms. There would be culture, song, dance and, of course, the elders telling their stories. It became a really interesting area. Sault Ste. Marie and that area had a dark history as well. It was also home to a residential school. As part of the settlement, the survivors came together and there was a commitment to create an Anishinaabek discovery centre, which the government has funded and is well under way. That's going to house a chiefs' library and some very interesting things.

Your testimony is very important, because what we're trying to understand is that the copyright law has fundamental principles under British and European law, and that doesn't necessarily work for first nations. I think some of you have mentioned it. The first one is that a lot of times, copyright is attached to an individual, and on the indigenous side, it's the community, it's the people, that it's attached to.

If I get very specific about the Copyright Act, it affords exclusive rights to one or more specific persons over an original work, fixed in some way. These rights are affordable largely for commercial purposes. The rights holder can transfer these rights to another individual or entity, and the rights themselves are temporary. Once they expire, the work is freely available to the public. To what extent do these principles conflict with the ways in which indigenous communities understand their cultures and traditional knowledge?

I'll start with perhaps Dr. Lavallee.

● (1635)

Dr. Lynn Lavallee: Indigenous knowledge varies. It's really hard to answer that question because it depends on the type of indigenous knowledge you're talking about. I gave you Marlene Brant Castellano's definition of the traditional knowledge passed down to the generations, spiritual knowledge, and empirical knowledge—usually about our medicines.

I'm going to tell a story to try to get to that. I think when it comes to something like the medicine wheel, a lot of people understand the medicine wheel teachings. It's a circle with four quadrants. You might have white, red, black, and yellow. Black might be replaced with blue if you're in Cree territory, but not all indigenous peoples in Canada have medicine wheel teachings. Medicine wheel teachings are vast and they're thousands and thousands of years old. You cannot actually cite the original author of the medicine wheel teachings, like APA style. It's impossible.

I remember that years and years ago, they wanted me to review something. It was a health promotion focus. They used the principles of the medicine wheel to talk about health promotion. They had me review this, and nowhere did they acknowledge the medicine wheel teachings. They didn't say where they obtained them, how they obtained them. They might have Googled them. Then they copyrighted that framework based on the medicine wheel. Nobody can use that framework because it's based on our traditional teachings that are thousands and thousands of years old.

I don't know if that's answering your question. It really depends on the knowledge. As a researcher in an academic institution, I firmly believe that some knowledge should never enter the institution because it's too vulnerable. An example of that is our traditional medicines and our traditional healing practices. You don't learn about that in a 12-week program or a four-year degree. It's impossible. You go through, for lack of a better term, an "apprenticeship" for decades, and even then you're not going to have all the knowledge. You never get to the point where you have all the knowledge. You're always learning.

I think there is some knowledge that doesn't belong in copyright at all. You can't copyright our traditional teachings. Think about the sweat lodge ceremony. I've seen students do a dissertation. You have to copyright your dissertation. You're the sole author. That's the whole purpose of doing a dissertation, to advance knowledge. They reported on the sweat lodge ceremony. It happened to be somebody I went to the sweat lodge with. I said, "Do you know that somebody actually wrote about this in detail describing exactly what happens in this ceremony?" and the elder didn't know. This is a thesis document that's publicly available—not too publicly, because it's in the ivory tower.

I know I jumped around and maybe didn't focus on the answer.

Mr. Terry Sheehan: Those are important points to make.

Camille.

● (1640)

Ms. Camille Callison: I first want to talk a little bit about ownership. Some indigenous knowledge is owned by an individual, by a clan, by a family, or it can be owned by the nation. But it's not all communal ownership. It's actually kind of a fallacy for people to think about communal ownership in that way because that's not appropriate.

Part of what I didn't have enough time to discuss was indigenous legal and governance systems in our indigenous laws and the funding to be able to make these happen. One of the reasons why the recommendation was as it was, after we put our heads together, and after years of of my own research, is that I wanted to propose some kind of a solution rather than coming with problems all the time. I felt that a generic statement respecting, affirming, and acknowledging indigenous ownership would be appropriate.

One of the reasons is that we hold what we call a Tahtlan in my community, a knowledge agreement, when we're working with other communities or with government to share knowledge. It lays out whether knowledge is sacred, and what we need to do with certain types of knowledge. It's going to be different with every nation across Canada. Here, in Treaty 1 territory, they don't tell stories until the snow is on the ground. That wouldn't be what is happening in my community when we're telling stories around the campfire when the salmon is flowing in the river. We tell stories in our feast house all year round. It's not going to be the same thing for every community, and we're not going to be able to find a one-size-fits-all solution across Canada with the diversity of so many different nations across this great country that we live in. Part of it is that we would do Tahtlan knowledge agreements, and we see these traditional protocol agreements.... I believe in calling it indigenous knowledge because our knowledge is still living, it's dynamic, it's still breathing, and we still breathe life into it.

You see these protocols, and I remember signing them with mining companies because that's where, in our community, we benefited from that employment and economic opportunity, but we also shared traditional use with them so they could avoid our sacred areas. They would act like it was a gift, because indigenous or traditional knowledge wasn't covered under the Canadian Copyright Act.

The reason why I felt passionate about it is that we see this knowledge leaving our communities, and it's not being shared in a culturally appropriate way. It needs to be shared in the cultural context from that originating community. There is some knowledge that women can't see when they are on their moon. It's not because that's derogatory to women, but because we honour our women, and we think that they are more powerful at that time. There is also knowledge that can't be seen. I can't tell a Ch'ioyone or wolf story in my community. I can't tell a story that belongs to another family. That's where it becomes that cultural context, so it needs to be shared in that culturally appropriate way. The only way that I feel that that could happen is through a generic statement of respect, for affirmation, and that indigenous people own that knowledge, and then work with the indigenous communities to provide funding for their indigenous legal systems to create those protocols.

We're already doing this in universities. We're having informed consent. We're having libraries or archives or museums work with people. There are many examples across the country. There are reciprocal research agreements. There are things that we do at the University of Manitoba that we can take advantage of to be able to create those for communities. That's part of why I would say that. Some knowledge isn't appropriate to be shared. Even as a Tahtlan person, my uncle would say....

The Chair: We're going to have to move on, sorry. We have a whole bunch of questions that we need to ask, so we have to make sure that everybody gets a chance to ask them.

Mr. Lloyd, go ahead.

Mr. Dane Lloyd: Thank you. It's interesting having another Mr. Lloyd at the committee.

Welcome, all members of the panel. Thank you for your presentations. My first question will be directed towards the art community, so Ms. Kinloch and Mr. Lloyd.

We've heard from other people, usually publishers and academics and authors, that the universities and libraries are using this 10% rule in order to deal with copyright. They can copy up to 10% without incurring fees. In the visual art world, which is what you deal with, how are they respecting copyright? Do they have a 10%? How would a 10% rule work, and how are they interacting with you?

Ms. Alexis Kinloch: I believe it works in the same way. Visual artists whose work is copied from textbooks also lose out on those payments because it's no longer required in people's eyes because of the change in the 2012 amendments. So I would say that it's very similar. There was no difference.

● (1645)

Mr. Dane Lloyd: How does that work practically? Are they taking 10% of a picture, or is it like an anthology of pictures an artist has put together, and they're saying that they can take one out of 10 of these things?

Ms. Alexis Kinloch: I don't know the details of that, particularly. The Winnipeg Arts Council doesn't deal with copyright on a day-to-day basis. As we both stated, we support the upholding of the artist, their knowledge, and their leadership in this, so we support CARFAC as a group of artists who have been working on this. We get our information from them and would defer to them and to Access Copyright to answer the questions we're not able to.

Mr. Dane Lloyd: Thank you.

This question is for Ms. Callison or Dr. Lavallee.

Even the authors and publishers we've talked to in previous committee hearings are not satisfied with the Copyright Act. They're not satisfied with fair dealing. They feel their works are being stolen from them. As well, the indigenous folks we have spoken to are feeling similar things, that their knowledge, art, and copyright are also being taken from them.

Also, I believe that you have asked this committee, in your testimony, for indigenous knowledge to be protected under the Copyright Act. However, wouldn't you agree that it seems that from the perspective of the authors, who are already supposedly protected by the Copyright Act, that protection simply isn't enough? Can you comment on that?

Dr. Lynn Lavallee: The perspective I was providing was of somebody who isn't the holder of that knowledge and does not have copyright to that knowledge. An example of that is a researcher who gathers information and traditional teachings from people and writes it down. They are the collector of that information, and they have copyright over that.

Mr. Dane Lloyd: That is an important issue, as well.

If there were an indigenous author who did create an original work that was being used by somebody without their free, prior, and informed consent, would you view that as an act of theft from that indigenous author?

Dr. Lynn Lavallee: Yes, if it's not cited. If you're talking about written—

Mr. Dane Lloyd: Or even if the author were not compensated for that work.... Should indigenous authors be compensated for their work under copyright?

Dr. Lynn Lavallee: I'm a researcher. We're never compensated for anything we write, so I think, from an art perspective—and you talked about Inuit art—that compensation is needed, but from a writing perspective, though, researchers typically, even when they publish a book, might get a few royalties, but in journal publications there's no compensation anyway.

Mr. Dane Lloyd: Thank you.

Ms. Callison, you seem to be situated within a very interesting intersection, because you work in the library sector, and so are part of the users of copyright, but you're also here representing an indigenous community who are creators of knowledge. How do you balance the needs of the Copyright Act, which I acknowledge does not really cover traditional knowledge? If there were aboriginal knowledge creators, should their copyright be respected by the Copyright Act?

Ms. Camille Callison: I come from the perspective that I'd like to see the exceptions for use still left in the Copyright Act and left as is. Part of that is because, even as an author, I expect people to be able to use 10% of a published work. A published work is different from when knowledge is taken without prior consent and approval. If you are publishing something, you fully expect libraries and the general public to be able to have fair use, so that 10% isn't an issue.

It's when things are taken without permission and used in the wrong context that I have an issue. As an indigenous person, I wouldn't publish sacred knowledge. I would say that, if you want more information on that.... My late great-uncle Pat said to me, "If you want the rest of that story, come back next year, and when I've fulfilled those cultural protocols, I might get the end of that story." I wouldn't publish that.

I think that's where we need to be able to do the acknowledgement, but then also to work with communities. What works for the Anishinaabe, the Cree, and the Métis is not going to work for the Tahltan. It's going to be different. It's going to be different for the Mohawk. That's where we need to have that kind of openness where we do the general statement and then work with people.

As a published author, if something is published in the public domain and the appropriate safeguards have been put in place, then I don't see an issue with that. Some things—and I think I said that in my brief—that are in the public domain currently that have not followed those protocols need to be retracted from that domain. That's where we work with individual communities, and where there are examples of art pieces or cultural pieces being taken from museums, put into storage, and used in the proper cultural way, instead of being out on display all the time.

● (1650)

Mr. Dane Lloyd: I'm not talking about sacred knowledge, although that is an important area, but about copyright. Let's say, for example, an indigenous person were to write an original story and copied it down, so it's fixated and copyrighted. It comes from their experience as an indigenous person, maybe drawing on some of the themes of their community experience. Is it your view that the individual's copyright should be respected, or if the community feels so, should it have rights over that individual's copyright?

Ms. Camille Callison: I could answer that.

First of all, with any book published today in this era of reconciliation, or even in the last five to 10 years, the publishers should have ensured that they had permission from the community before they published it. If it has been taken and they have published it.... Even when I told a story to my adopted grandma, she would ask who told me that, and I would always have to cite the elder who had told me, so it could be cited properly and go back to the community.

That published material and fair use of it is the same as for any other published material, if they followed the same protocols. It's about following those protocols of obtaining informed consent from community members. And by informed I mean that they have to state.... If an elder speaks only in their language, then they need to have a translator who tells them what's going to happen when they publish that story, rather than taking that story. So appropriation of knowledge from any community, even if it's non-indigenous or indigenous, is obviously wrong; that's theft of cultural material. You need to have permission from that community, and hopefully those protocols are taken.

That's the reason we need to go back to the communities and enhance and give them the funding to be able to create those protocol arrangements.

Mr. Dane Lloyd: To summarize what you're saying is that even if an individual from that community writes a completely individual work, or an almost completely individual work, they still need the permission of the entire community to publish it.

Ms. Camille Callison: I wouldn't say they need the permission of the entire community. Within our communities this is where there is that fallacy among non-indigenous people that all information is held communally. I know who owns a story and who has the right to pass on that story and I would go to that person and ask them if I could write it down. That's why you have to work with the communities for their protocols, otherwise you don't know who owns that story and who has the right to pass it down. That's where it's really important.

The Chair: Thank you.

We'll move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

One of the things we're hearing from all communities of artists and creators in print, television, and film, through a series of books and journals, is this disempowerment of the model that's emerged, especially in the digital age, when it's been even faster. It's to the point now that we're all used to the musician who throws up their song on YouTube and hopes it becomes a big hit so they can sell albums later. It's part of how they've become successful at selling ads on YouTube, but it's like a loss leader.

We heard testimony the other day is that we have academics publishing quite extensively in journals—everything from medical to social sciences, empirical research, and so forth—just to get or maintain their tenure, or to get into other publications that would affect their tenure. It's really a disempowered relationship for the creator.

Does anybody have any suggestions as to what can be done about that in general? An immense amount of wealth is being created through this transition to the digital age, but it's not reaching the creators. In fact, on the previous panel I noted that some major publishers internationally have been the major benefactors. We've heard testimony that universities, colleges, and school boards are spending more and more money, but the publishers or the creators are getting less from royalties.

Does anybody have any suggestions on that, because I think maybe copyright isn't the place to solve this, but what do we do in the meantime?

● (1655)

Dr. Lynn Lavallee: Sometimes I talk about moral ethics when it comes to research ethics. I think it crosses all boundaries. In academia, it's publish or perish. There are some people who are very prolific. They're out there, and they're gathering information. Those are the people many communities are afraid of, because it's all about the publishing and the speed at which that's done. When we work with a community, that takes time, right? I don't know if that's a Copyright Act issue, per se. I think it's more of a moral ethics issue. I think even the tri-council policy statement, with all the articles, can't deal with it as well. I think it's more of a moral issue.

Mr. Brian Masse: Anyone else?

Ms. Camille Callison: As a librarian, I am really all about open access to information. I think that's really important. There are many examples, when it comes to even sharing of traditional knowledge, where there are levels of access, whether it's family, or whatever. We want to get that knowledge out there. Oftentimes we talk a lot about protection, but for indigenous communities, we love sharing our knowledge. We want people to know the language. We want to share those things with people. I think with open access and publishing, it's really about sharing and getting the information out there.

In my only experience publishing, I never made a dime off it, nor did I want to. I wanted the knowledge to go out there to people about indigenous knowledge ownership. I think that's part of where some academics are coming from. In libraries, of course, we love it when there's open access, because we're able to provide more services to our community.

I think it really depends on the author. We've seen publishing houses that have gotten very wealthy, but we don't want to.... Obviously, they're our business partners. We want them to be able to stay in business. I think it is a complicated situation, but I really believe in open access to information. As a librarian, that's where we come from.

Mr. Brian Masse: Mr. Lloyd.

Mr. Dominic Lloyd: I can be really brief. I would add to what's already been said. There are definitely rights holders or rights organizations in music and in visual and that kind of thing. Those are the people who administer these types of issues. You also, and I tried to say this off the top, should speak directly to the artists and to the people who are going to be affected, not necessarily always through the people who tend to speak on their behalf. Make a concerted effort to get to the grassroots—dare I use that word—the people who are actually being most directly affected by those questions.

Mr. Brian Masse: Would that be a role for a much stronger, robust copyright board, for example? Decision-making, enforcement, and repercussions would maybe come into effect if you had misappropriated, stolen, or used work, and it had been found through the process. There would be enforcement and reparations. It would include maybe even a guarantee of inclusion of the original creators, even if they've signed over some rights or so forth. At least they would be consulted in the process. Is that, perhaps, a way of adding some layer of accountability for the worst of cases?

● (1700)

Mr. Dominic Lloyd: I think that's a question for the artists themselves, as I said, because they are the ones who are going to be affected. To use your example of a musician who puts a song up on YouTube, musicians are making a lot less from a YouTube hit than what they would have received from radio play or something like that years ago. They're the ones who know the most about the ins and outs and all the differences between what a Spotify play is worth versus what a YouTube play is worth versus what a Power 97 play is worth. Ask them how they want to deal with that and how they want to address that.

Ms. Alexis Kinloch: Since you asked if it was something outside of possibly copyright, I would suggest more funding for artists in the first place so that they don't have to be working a bunch of other jobs and can maybe be more informed and spend more time being aware of their rights and protecting their work. That would probably help things out in a very general way. I realize it's not getting at the heart of things, but in general, artists get really tied up and can't necessarily devote enough time and space to protecting their craft.

Mr. Brian Masse: That's a good point.

Go ahead.

Ms. Camille Callison: I believe you have the Canadian Federation of Library Associations' statement on the creation of a strong copyright board to represent the multiplicity of views. I would add, when you're dealing with issues around indigenous knowledge, traditional knowledge or cultural expressions, that you ensure that you have someone on the board who is well versed and of indigenous ancestry.

There are a number of academics who have done this, who are lawyers or professors and this is their career. That's what their research area is. If you want those names, I can always help you with that, but you'll probably hear from them across Canada.

Mr. Brian Masse: We have.

Do you have anything to add?

Ms. Sharon Parenteau: No.

Mr. Brian Masse: Okay.

How am I doing for time?

The Chair: You are way over.

Mr. Brian Masse: There we go. From my perspective, I'm doing well.

The Chair: Are you finished, though? Great.

I figured the other guys were way over, so I'd let you go way over too.

Mr. Jowhari.

Mr. Majid Jowhari: Am I going way over, or not?

The Chair: I'll signal when the time is up.

Go ahead. You have seven minutes.

Mr. Majid Jowhari: Thank you.

First of, thank you all very much for coming. I also acknowledge the land that we are on. Thank you for hosting us today.

I'm going to start with Ms. Parenteau.

Sharon, you said that traditional knowledge is passed on through storytelling. You also said it's more on the knowledge keepers to use oral history to be able to keep that knowledge alive and pass it on.

Before the copyright legislation, these stories were being told, were being repeated for thousands of years. Also, Camille talked about getting permission from the elders or from the original storyteller to be able to pass it on. What is the protocol in indigenous nations for us to be able to mimic, or at least to amend or consider as we look at copyright as it relates to indigenous or traditional knowledge?

Ms. Sharon Parenteau: I think you have a couple of different concepts going on at the same time.

First, when we use the word "indigenous", we're talking about a lot of different people. What Camille is doing in her community, what Lynn is doing in hers, and what I'm doing in mine are very different. They're first nation and Métis.

I am Métis. Georgina and I even come from the same community. What she might have learned in her community is different from what I learned in my community.

Knowledge is passed down from generation to generation in families and in communities. You can be an outsider within the Métis community. If I go to Georgina's community, I'm an outsider in her community, so I have to be mindful of how I'm gathering that information.

● (1705)

Mr. Majid Jowhari: You become the knowledge collector there.

Ms. Sharon Parenteau: Correct.

If my father, for example, is taking me out into the bush and teaching me which mushrooms are the ones I can pick, that's information that was passed on to him from his parents. It's not the same type of sacred knowledge. You do have to have permission to use it, but you also have to be very knowledgeable yourself before you can pass that information down. The knowledge is very complex. There are multiple layers.

Mr. Majid Jowhari: How does that knowledge get out today?

It's not being respected by coming in and asking the knowledge creator or knowledge owner to be fairly compensated or be acknowledged. How is that knowledge getting out?

Ms. Sharon Parenteau: I can tell you, Joseph Boyden is one really good example of that.

He, for one, said he was indigenous. He said he was Métis first, which he's not. He's claiming that he's Métis, but according to our definition, he is not Métis. Then he went to indigenous knowledge keepers and asked and listened to their stories. I don't know the process that went on. Maybe he told them he was going to write a book about it. Then he took that information and he wrote it down in a book and made a lot of money off it. He won awards.

That is a really good example of how traditional knowledge needs to be safeguarded for those very reasons. He might have done it in a very honourable way, but you can see from the backlash of the indigenous community in Canada that it is not acceptable.

Mr. Majid Jowhari: Does anybody else want to make a comment?

Dr. Lynn Lavallee: I think that our challenge is thinking about indigenous knowledge. We're emphasizing that this knowledge is different across all lands, because indigenous knowledge really comes from the land.

The other thing is the variation of indigenous knowledge. The storytelling is one aspect of indigenous knowledge. The medicines are another aspect of indigenous knowledge.

As Camille said, there are some stories that we just keep within our family. These are not meant to be shared more broadly. There are teachings within these stories. The reason we tell these stories is to provide teachings to that next generation.

There are some stories like the stories Joseph Boyden heard. He heard the story about the bear walker—and I'll say that because it's still daytime. That is a very specific story that has been reiterated in many different ways. It's something that someone shared with him, and there was no expectation that he was going to write a book about it.

There are these stories, and different prophetic stories, the seven generation teachings. They're almost pan-nation teachings. They are deeply embedded, old, traditional knowledge. Everybody will say it in a different way. Sky Woman is talked about in different cultures. These are stories that cross many different nations and take many different forms.

Then there is very specific indigenous knowledge with respect to healing ceremonies. I think that's one thing that's happening right now.

We're talking about different things.

Mr. Majid Jowhari: Do the first nations, the Métis, want that knowledge shared?

● (1710)

Dr. Lynn Lavallee: Some of it.

Mr. Majid Jowhari: Okay.

Here is where I have a dilemma. You also talked about an indigenous legal system. You didn't get a chance to expand on it. I'm hoping that in the next round of five minutes I'll ask you that question.

Is there something that could be in place? Is there some formal guideline that we could use? It looks like the spectrum is very wide.

Ms. Camille Callison: First of all, I need to say that I'm not a lawyer. I'm not giving you legal advice. You can talk to my sister, who is a lawyer, for that. I can't solve all of the legal dilemmas in about five minutes, but I can give you a good try.

I think in every culture there's private and public information. I'm sure you have stories in your family that you don't necessarily tell in public, and when they do come out in public, it can be a little embarrassing. It's the same in indigenous communities. It's really wonderful that people are so interested in them and there's this curiosity about them, but there is private information in our families. I think we have to acknowledge that this is here, and it's always going to be present, no matter who it is.

I come from an anthropology background. We know that anthropologists were guilty of this. They went out and collected stories They were so concerned to write down the stories in the era of salvage anthropology, when they felt that indigenous people were dying in Canada and that they would die out, that they didn't worry about finding out whether they were private or family stories, or things that could be told in public, or when they could be told. There was an absence there of the protocols.

I always say to everybody that it's about relationships. Reconciliation is really about relationships, and what we're doing with communities. You have to go back to the communities and form a relationship with them, and then find out from those communities how to access that knowledge, how it's preserved, who owns that knowledge, how it's stored, and how you can share it, or if you have the right to share it.

That's part of the legal system in governance systems. Indigenous communities need the government's help to be able to establish those protocols. When you come and ask that question of an Anishinaabe person, they can say, "Well, we've gone back to our elders and our community, and this is how we deal with this knowledge." There needs to be that work.

That's part of the reason I and many other people felt that a generic respect, affirming, and recognizing would be the way to go, and then allow the communities the time to be able to work with their communities on that knowledge.

I hope I answered your question. I don't think I can give you a whole lot.

Mr. Majid Jowhari: I appreciate it.

The Chair: Thank you. Did I give you enough time? I'm back in the good graces?

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd: This question is for Ms. Kinloch and Mr. Lloyd. You provided some information that the average salary of a writer or artist is about $33,000 in Canada, which isn't a very impressive number. It's a tough life for an artist in this country. Writers have it even worse. We've been told in multiple testimonies that it's about $13,000 a year for a writer. I just want to get your perspective, and possibly with some concrete examples, or even anecdotes, of people whom you know or have interacted with, Canadian artists or authors. What is the impact of fair use on your cultural—and I hate the use the word "industry" because it really is a passion, but I'm going to use it—industry? Where do you see the future of your industry if these problems aren't addressed properly?

Mr. Dominic Lloyd: The $33,000 number, yes, it was the average, and I think, yes, if you're a dancer it's well below that.

In terms of fair dealing in literature specifically, I'm not an expert on that. I know my colleague here provided some examples of sales and royalty numbers in the visual arts, which is primarily where our research has led.

Did you want to speak to that at all, Alexis? You're the one who has the research on that.

● (1715)

Ms. Alexis Kinloch: Let's see....

Mr. Dane Lloyd: To clarify, I am asking about the visual arts. I'm just using the comparison that writers are facing the same issue, and we've heard from them what the effects are, that they believe that Canadian culture is really at risk if this continues to go this way. I'm wondering what is the perspective of the visual artists?

Ms. Alexis Kinloch: About visual artists on fair use, I don't have personal examples.

I'm sorry, I'm bad at thinking on the spot like this, but an example that you could potentially look at, which goes to your use of the terms "passion" versus "industry", is that of an artist on the the east coast recently. You may be aware of this story, where the CRA is charging this artist over $30,000, I believe it is, in taxes because they have deemed his practice to be a hobby, and deemed him to be a hobby artist.

The Canada Council for the Arts and other arts funders have a definition of a professional artist. It is an industry of sorts. While these people are passionate about their work, I still think it's important to recognize the professionalism that goes into it, which is why we keep saying that you should defer to the artist, because they have had to become professionals in order to protect themselves. Also, they go to school, or even if they don't they spend their lives doing it and they deserve that recognition. The danger really is that they could also be disrespected in this way of being called a "hobby artist", or saying it's a passion rather than a job or their life's work, which then allows a blurring of lines to give maybe less agency to the artist.

Mr. Dane Lloyd: What is the risk to artists if the issue of fair use and the issues with their community don't get solved?

Ms. Alexis Kinloch: If the issue of fair use doesn't get solved...?

Mr. Dane Lloyd: Where do you see this going?

Ms. Alexis Kinloch: With that 66% decline in payments to visual artists by Access Copyright between 2013 and 2017—a 66% decline in five years for visual artists—doesn't it just go to their not getting paid at all? I do think that we're in danger of that. I don't think it's out of the question that that is something that could happen, considering that payment to visual artists, and grants and opportunities for visual artists, have decreased significantly in the past decade.

Mr. Dane Lloyd: I understand that, but do you see them moving to other jurisdictions, as opposed to Canada, if their work isn't respected? Do you see them quitting altogether and not producing art? Those questions seem obvious, but I want to hear your perspective.

Ms. Alexis Kinloch: God!

Mr. Dominic Lloyd: It's almost a loaded question, and I say that with respect because nobody knows perhaps what will happen.

The fact is that artists are being paid less for the same amount of use of their work. If you look at it as a curve, eventually the curve is going to go down.

As to whether they're going to leave the country, some probably will; some might not. As Alexis has stated, there's a perfect storm of things happening now. To use the example she brought up, the CRA looks at one artist—an artist, by the way, with extensive international practice and recognition all over the world—as a hobbyist. He's being looked at by the Canada Council for the Arts as a professional.

We need to get the definitions right. I think that's what it is. There is a danger. What the danger is, I don't know. I shudder to think.

Ms. Alexis Kinloch: What's the point of knowing the end result of the worst thing that could happen to artists? Do we have to speak about it in those terms? Can't we just support the fact that artists should have more space and be given more respect, rather than saying, "If we don't, then maybe they'll move away"? Artists have relocated and done all those things in the past. We've seen through terrible times in history that people in general always come up through hope. I just don't think we should talk about the potential of that. Let's move in the other direction.

● (1720)

The Chair: Thank you. These are definitely tough questions.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan: Thank you very much.

Cecil Youngfox, a great painter, a great artist from my area of Blind River, has Ojibwe and Métis parents. He is fantastic, and I really appreciate his art. He has been inspired by various cultures. He paints. It's just wonderful.

My question is going to be for Dominic and Alexis.

Within different industries in the artistic community, there are residuals or royalties where, when a piece of art is resold, there's money back to the artist. I've talked to a lot of artists about this. Once the artist sells the painting and the painting is resold, the original artist does not receive any compensation, so do you think there should be some type of compensation for visual artists?

Ms. Alexis Kinloch: Yes. What has been proposed, with extensive administrative possibility and work done behind it, is 5% for the artist.

In the example of Kenojuak Ashevak, after the $58,000 resale, the artist would have received $3,000 on top of the $24 she got for the original.

That 5% is what the artist should receive, and that should be revisited continually for concerns of inflation.

Mr. Terry Sheehan: That's good. I appreciate that. I just wanted to get that on the record.

Earlier the committee heard from Professor Bear Nicholas, who appeared before the committee in Halifax. She recommended that the Copyright Act be amended to recognize indigenous storytellers as performers. Would you endorse that particular recommendation?

Dr. Lynn Lavallee: When I think about performance, right now when we have events and we have someone with a drum, a performance isn't ceremony. There will be differences of opinion on this, but that's my opinion. When I hear "performance", the hair rises on the back of my neck. For the stories, the terminology "performance", I wouldn't say minimizes it, but for me it just doesn't fit. I don't know how other people feel about it.

Ms. Camille Callison: Coming from the west coast, we do actually talk about it as a performance, but it depends on the performance. For example, there are sacred performances that happen in the longhouse that you're invited to, and there are no cameras. Then there are other feast performances that happen on the north coast, but they may be referred to as "longhouse performances" in the south. Those are definitely public performances. If you're capturing that on video or camera, whatever, it's hard to get permission when it's a public performance. But if you're reproducing it, you definitely have to get the performer's permission just like you would for any other type of performance. It really depends on the context. I think that's where it has to differ.

When we look at things like indigenous knowledge in ballets that we've had here, with the reconciliation ballet and things like that, we see that as performance. I think it really depends on the context.

Ms. Sharon Parenteau: I also think that when you think of performance, you think of entertainment. A storyteller could be an entertainer at the same time. That's a different kind of storytelling than somebody who is telling you the story for the purpose of giving you a teaching. That's a different kind of teaching.

● (1725)

Mr. Terry Sheehan: Can I get a clarification, because under the Copyright Act a storyteller would eventually become part of a public domain? I think you would agree with that statement.

Ms. Sharon Parenteau: Yes.

Mr. Terry Sheehan: That's interesting.

How much more time do I have?

The Chair: None.

Mr. Terry Sheehan: I had some of the same kinds of questions, if you'd had more on the legal stuff.

The Chair: You have nothing left.

Mr. Masse, take us home.

Mr. Brian Masse: Thank you, Mr. Chair.

I'm going to finish with the Copyright Board again. Maybe we could just go across the panel for your comments on the board, whether you have suggestions and/or favour the status quo, whatever it might be. If you don't have anything to say, that's fine too, but I want to make sure that an opportunity is provided for you to comment.

Ms. Sharon Parenteau: I think in the day of reconciliation, "inclusion" is a good word, and "representation" and "distinctions-based". Those are key words that I would include in thinking about a board.

Mr. Brian Masse: Sorry to interrupt you, but would more timely decisions, for example, also be important for your community? It's decisions are lingering. I'm not being critical of the Copyright Board per se. It's just that the decisions are taking long periods of time. Is that important? Maybe it's not. If you don't have comments, think about it. You can always submit them to us. You're not here on the spot. We're here for your input.

Ms. Sharon Parenteau: I don't know if it has really affected our community. For us, when we think of copyright, I'll go back again to the MMCREP, our own research ethics protocol that we've developed. We've found a way to work with universities and colleges as a partner. When we have a student who comes in and says, "I want to do research. Oh, I've filled out the ENREB form already." I say, "That's great that you've done the university's piece, but now you're working with us, so you have to talk with us."

That's not really answering your question about timeliness, but—

Mr. Brian Masse: You're giving a model that actually works.

Ms. Sharon Parenteau: That's part of what I call "inclusive".

Mr. Brian Masse: I won't interrupt the last panellist.

Ms. Camille Callison: I know that I said this earlier, and Lynn Lavallee did as well. I support a really strong mandate for the Copyright Board, but I also support having indigenous representation on that board.

I guess the other thing for me is that you mentioned timely decisions. In this regard, many of the people going before the Copyright Board are authors, performers, and other artistic holders of copyright. The disadvantage for them is, number one, that the time it takes is so long and that they have to obtain legal counsel. If we could make it more accessible, I think that would be important.

I think those are really crucial. I would love to see a really strong Copyright Board in Canada, making decisions and having the funding to be able to make those in a timely manner.

Dr. Lynn Lavallee: I might just emphasize the inclusion piece and ensuring that there is indigenous representation. As you can see, we differed in our opinions on many things, but I think that representation is critical, especially with respect to whatever issue might be coming forward. There's not one person, or even two or three people, who will be able to give you all of the knowledge you need. You have to really seek out the right person, which depends on the issue the board is looking at, to have a strong understanding.

Also, maybe there could be some sort of education given to indigenous people. I don't know the status of Joseph Boyden, and I don't expect us to have a conversation about that, but I know the community feels that this knowledge was taken inappropriately. These are the types of stories.... If he was going to write about this, the person telling the story should have known that. Teaching communities what the Copyright Board is, how it can help them, and how to go about that would be a huge undertaking, but I think it needs to be done.

● (1730)

Ms. Alexis Kinloch: No, I decline.

Mr. Dominic Lloyd: I'll just say that if it continues to work, then great, but that has to be monitored. Also, as I think we've heard from this fine group of people beside me here, context is really important. What works in one particular scenario today may not be the ideal thing tomorrow, so having some flexibility, and of course representation, is really important.

The Chair: Thank you very much.

I'll take a moment to make a comment. In my riding I have the Katzie First Nation and Kwantlen First Nation. A couple of years ago the chief invited us to a couple of different ceremonies in the longhouse. They were amazing to see. The first reaction in this day and age is to pull out your phone and videorecord it. We didn't. In that situation, when we're talking about performances—although I don't know if it's labelled a performance—that's the culture and history, and I think there's a tendency to want to do this. This is something that we're going to have to keep asking questions about to really understand that this is your copyright. I think that's where the awareness has to start happening.

That said, this is just a first step. As we move into the second phase, we will have an indigenous section. This is giving us a platform that we could build on.

Our wonderful and amazing analysts are over here. One amazing thing to note is that when witnesses say something pertinent, you see them go crazy on their laptops.

Mr. Francis Lord (Committee Researcher): Everything is pertinent.

Some hon. members: Oh, oh!

The Chair: Yes, but when they get excited, that means you've said something really good.

We're looking forward to tearing this piece apart as we consider copyright.

I want to thank you all for coming today and sharing your knowledge and expertise with us as we move our way through this.

We're going to adjourn for the day, and we'll be back at seven o'clock tonight for the open microphone session, assuming that people aren't going to watch the hockey game. Thank you all very much.

The meeting is adjourned.

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